

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 Department 19 Hon. Warren L. Ettinger, Judge  
4  
5 BETTY BULLOCK, )  
6 Plaintiff, )  
7 vs. ) NO. BC249171  
8 PHILIP MORRIS, INCORPORATED, a )  
corporation; et al., )  
9 Defendants. )  
\_\_\_\_\_ )

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11  
12 REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS  
13 Los Angeles, California  
14 August 28, 2002  
15  
16

17 APPEARANCES:

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27 Volume \_\_\_\_ of \_\_\_\_ Ruanne McArthur CRR, RPR, CM, CSR#2699  
28 Page 1917 through 2097 Official Reporter  
1 INDEX FOR AUGUST 28, 2002

2  
3 M A S T E R I N D E X  
4

5  
6 CHRONOLOGICAL INDEX OF WITNESSES  
7

8 Plaintiff's VOIR  
9 WITNESSES: DIRECT CROSS REDIRECT RECROSS DIRE  
Rodas, 1919 1947 1961  
Sergio U., M.D.

10 Wulff, 1968 1984  
11 Phillip S., Sr.  
12 Merryman, 2004  
Walker (Testimony read)

13 Vandermolen, 2027 2065 2092 2095  
14 Louis, M.D.

15  
16 M A S T E R I N D E X  
17 EXHIBITS

18 WITHDRAWN

	EXHIBIT NO.	FOR IDENTIFICATION	IN EVIDENCE	OR REJECTED
19	8271	1965		
20	8358		2044	
21	8359		2046	
22	8360		2049	
23	8452		2057	
24	12278	2079	2067	
25	12282		2069	
26	12283		2070	
27	12285		2082	

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1 M A S T E R I N D E X  
2 EXHIBITS

3 WITHDRAWN

	EXHIBIT NO.	FOR IDENTIFICATION	IN EVIDENCE	OR REJECTED
4	12287	2081	22082	
5	12288	2079	2080	
6	12291	1953	1954	
7	12292		1955	
8	12293	1956	1956	
9	12294		1958	
10	12295		1960	

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1 Los Angeles, California August 28, 2002  
2 Case Number: BC249171  
3 Case Name: Bullock vs. Philip Morris  
4 Department 19 Hon. Warren L. Ettinger, Judge  
5 Reporter: Ruanne McArthur, CSR #2699  
6 Time: 9:00 a.m. Session  
7 Appearances: (As heretofore noted.)  
8 -oOo-

9 (The following proceedings were held  
10 in open court within the presence of  
11 the jury:)

12 THE COURT: The record will reflect that the  
13 jury is present in the box, all counsel are present.

14 Mr. Piuze, you may call your next witness.

15 MR. PIUZE: Your Honor, I would, but he just ran  
16 up the hall and I don't want to yell up there. He  
17 should be back instantaneous.

18 THE COURT: Okay.

19 (A pause in the proceedings.)

20 THE COURT: Here is the first live witness,

22 Dr. Sergio Rodas.

23 Dr. Rodas, will you be kind enough to come  
24 over and stand at this point; and when you get there,  
25 just stop, face me, and raise your right hand.

26 Do you solemnly state the testimony you  
27 may give in the cause now pending will be the truth, the  
28 whole truth, and nothing but the truth so help you God?

1918

1 THE WITNESS: I do.

2 THE COURT: Would you be seated, sir, and we are  
3 going to put that microphone on you in just a moment,  
4 and you've got some water there.

5 Doctor, just a couple of rules. It is  
6 important -- I don't know quite how they build these  
7 courtrooms, but they build them so the sound system is  
8 really terrible. So if you don't speak in a loud voice,  
9 microphone notwithstanding, nobody is going to hear you,  
10 most of all the jurors.

11 And they promised me after the last  
12 witness that they are not going to be kind and gentle.  
13 If they don't hear you, they are going to yell at you.  
14 So be prepared.

15 (Laughter.)

16 THE COURT: Listen carefully to the question  
17 that the lawyer who is questioning you asks. It is very  
18 important that you only answer what he asks. If it  
19 takes a yes or no answer, just give him a yes or no  
20 answer. The lawyers here are more than capable of  
21 following up and going down the path that they want.

22 Secondly, when the lawyer is talking, make  
23 sure you are not talking, because the court reporter can  
24 only take down one voice at a time.

25 And finally, when a lawyer on the other  
26 side says "objection," stop, and then let me do whatever  
27 I have to do, and then go on. Okay?

28 THE WITNESS: I understand.

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1 THE COURT: Go ahead, Counsel.

2 MR. PIUZE: Thank you.

4 \* DIRECT EXAMINATION

6 BY MR. PIUZE:

7 Q. Good morning.

8 A. Good morning.

9 Q. Tell us your occupation, please.

10 A. I am a family physician.

11 Q. Where?

12 A. In San Juan Capistrano, California.

13 Q. Tell the jury your educational background  
14 that led you to be a doctor, please.

15 A. I took an undergraduate degree in English  
16 at Occidental College in Los Angeles. I attended  
17 medical school at UC Irvine in Orange County, and I  
18 completed a residency at family practice at the  
19 San Bernardino County Medical Center.

20 Q. How long have you been practicing medicine  
21 now, please?

22 A. Let's see. Since 1980 -- as a boarded  
23 physician since 1987; and I received my M.D. degree in  
24 1984, but I worked as a resident physician from '84 to  
25 '87.

26 Q. Where?

27           A. Initially, my residency, three years at  
28 San Bernardino County Medical Center. I then moved to

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1 Ventura County where I worked from 1987 through 1997. I  
2 relocated to San Juan Capistrano in 1997 and have been  
3 there ever since.

4           Q. Thank you.

5           You said boarded?

6           A. Yes.

7           Q. And I know what you mean and some of us  
8 know what you mean, but tell us all what you mean,  
9 please.

10          A. What it means is physicians practice in a  
11 variety of specialties. My particular specialty happens  
12 to be family practice.

13          In order to be boarded, one must pass,  
14 upon completion of their residency, a certification  
15 examination in family practice; and one must retake it  
16 every seven years so that you are considered to hold  
17 board certification by the American Board of Family  
18 Practice.

19          Q. Thank you.

20          So that's you?

21          A. That is me.

22          Q. You are boarded in family practice?

23          A. I am.

24          Q. What's family practice, please?

25          A. Family practice is what used to be known  
26 as general practice, where you take care of primary care  
27 problems. It is said that as a family physician, if  
28 your training is appropriate, you should be able to take

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1 care of roughly 90 percent of what comes to your office  
2 and refer the rest. As such, I treat patients from  
3 infancy to nursing home, all ages in between.

4          Q. Thanks.

5          This is a geography question. San Juan  
6 Capistrano is in what county?

7          A. Orange County.

8          Q. And where is it in Orange County?

9          A. It is in southern Orange County, at the  
10 very southern tip. I believe we are maybe 10 or 15, I  
11 can't say for sure, miles from the San Diego County  
12 border.

13          Q. Thank you. When you became a doctor down  
14 in San Juan Capistrano, did you join a group of some  
15 sort down there?

16          A. I work for the Camino Health Center, and  
17 that is a community clinic that is owned and operated by  
18 the Sisters of St. Joseph of Orange; and we take care of  
19 individuals who are uninsured or underinsured;  
20 essentially, a lower socioeconomic status population.

21          Q. Does that all translate into a lot of the  
22 people you take care of are poor?

23          A. All of the people I take care of are poor.

24          Q. When did you first ever see Betty Bullock,  
25 please?

26          A. I believe it was in early 1998, possibly  
27 late 1997.

28          Q. Do you remember Betty Bullock?

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1          A. Very well.

2          Q. Do you have a chart for Betty Bullock?

3           A.    We have one in the office.  
4           Q.    Do you have a chart with you here today?  
5           A.    I do not have her chart.  
6           Q.    Prior to your coming in before the jury,  
7 did I let you look at my copy of Ms. Bullock's chart?  
8           A.    Yes, I did.  
9           Q.    As I ask you questions, would you like to  
10 have my copy of Ms. Bullock's chart?  
11          A.    It would be helpful.  
12          Q.    Okay. You see that there is different  
13 colored paper clips on the chart?  
14          A.    Yes.  
15          Q.    Have I explained to you that that was to  
16 enable me to get around the chart?  
17          A.    Correct.  
18          Q.    Do you have a pretty fair understanding of  
19 this chart with or without colored paper clips?  
20          A.    Yes. I probably would understand it  
21 better without the paper clips.  
22          Q.    Please don't take them off or I'll be  
23 lost.  
24          Here you go.  
25          THE COURT: Do you have a copy of this?  
26          MR. LEITER: I have a copy of the chart, yes,  
27 your Honor.  
28 BY MR. PIUZE:

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1           Q.    Are you the only doctor in the clinic?  
2          A.    No, I'm not.  
3          Q.    Roughly how many other doctors are in the  
4 clinic?  
5          A.    There are three -- pardon me -- two  
6 full-time physicians and one part-time physician in the  
7 practice.  
8          Q.    Are you the only physician at the clinic  
9 that saw Ms. Bullock?  
10         A.    I am not.  
11         Q.    Who else saw her?  
12         A.    Besides myself, Dr. Samuel Poniachik and  
13 Dr. Edmond Wong, and a gentleman who was there before I  
14 was, and I believe he only saw her once and I don't even  
15 remember him, but his name was Dr. Smith.  
16         She was also seen on one occasion by  
17 Dr. Jong Lee, who is a general surgeon who saw her  
18 once.  
19         Q.    Roughly when is the last time that you  
20 saw Ms. Bullock?  
21         A.    May I look at the chart?  
22         Q.    Sure. Please.  
23                 (A pause in the proceedings.)  
24         A.    I said I was familiar with it.  
25 Unfortunately, it is not in chronological order.  
26                 (A pause in the proceedings.)  
27         A.    12-29-2000.  
28         Q.    Over the course of time from either late

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1         1997 or early '98 when you first saw her and 12-29-2000  
2 when you last saw her, what were the kinds of things  
3 that you were seeing Mrs. Bullock for?  
4         A.    Mrs. Bullock was seen for routine  
5 health-care maintenance: Pap smears, mammograms,  
6 recurrent urinary tract infections, recurrent episodes  
7 of bronchitis, smoking cessation, and high cholesterol.

8 Q. We are interested here, obviously, in  
9 smoking, bronchitis, and smoking cessation.

10 Do you have recollections, independent of  
11 the chart, of dealing with Ms. Bullock on the issues of  
12 smoking, bronchitis, and smoking cessation?

13 A. Yes, I do.

14 Q. Could you take a look, please, at the  
15 notation for December 1997. I believe you will find a  
16 notation there for December '97.

17 A. (Witness complied.) December 19, 1997.

18 Q. Did you see her personally, or was it  
19 another doctor associated with your group that saw her  
20 that day?

21 A. I saw her that day.

22 Q. On that day, can you tell the jury,  
23 please, what her complaints to you were.

24 A. The note of September -- December 19, 1997  
25 was not completed on the date of the visit. The chart  
26 left my desk, my control, for a refill, what be it, and  
27 I did not get it back until three days later.

28 What I have written in the medical record

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1 is that the patient was seen due to upper respiratory  
2 infection/exacerbation of COPD. She also required lab  
3 tests prior to employment.

4 The physical exam was remarkable for  
5 rhonchus breath sounds bilaterally. My assessment was  
6 COPD, in addition to elevated cholesterol, health-care  
7 maintenance; and I treated her with some antibiotics.

8 Q. What is COPD?

9 A. It's an abbreviation for chronic  
10 obstructive pulmonary disease.

11 Q. What is chronic obstructive pulmonary  
12 disease?

13 A. It is a disease characterized by the  
14 long-term degeneration of the lungs capacity to carry  
15 out basic ventilation leading to progressive shortness  
16 of breath, lowered oxygen in the bloodstream, and the  
17 attendant complications therefrom.

18 Q. When you told us the things that you  
19 treated Ms. Bullock for, I heard you say bronchitis, but  
20 I didn't hear you say COPD.

21 Is there a connection between bronchitis  
22 and COPD?

23 A. Our assessment was that she had underlying  
24 COPD and that it had been exacerbated or made worse by  
25 bronchitis.

26 Q. Okay. What's the difference between COPD  
27 and bronchitis?

28 A. Well, I treated the bronchitis as a

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1 bacterial exacerbation of an underlying illness. COPD  
2 can also be thought of as a chronic bronchitis; but when  
3 I say bronchitis in here is when I am actually treating  
4 her for an infection, worsening an underlying illness.

5 Q. Okay. When you say COPD can be thought of  
6 as a chronic bronchitis, why do you say that?

7 A. Well, because bronchitis by definition is  
8 an irritation of the bronchial passages; and that can be  
9 caused by a virus, by a bacteria, by mold spores, or by  
10 the respiration of some toxic substance; and cigarette  
11 smoke is a chronic irritant to an individual's bronchial  
12 track. It's inflamed chronically, bronchitis.

13 Q. Okay. Now, on that first day, you've told  
14 us what you wrote down three days later, what treatment,  
15 if any, did you suggest, please?

16 A. I treated her with oral erythromycin, 250  
17 milligrams four times a day.

18 Q. Do you say anything to her about quitting  
19 smoking?

20 A. No, I did not, not on that date.

21 Q. I have, according to my notes here, a  
22 visit that you had with Ms. Bullock, or at least two  
23 visits or maybe more, in March of 1998.

24 Could you take a look at that part of your  
25 chart, please.

26 A. I have it in front of me.

27 Q. Can you tell the jury how many times,  
28 according to that chart, you saw Ms. Bullock around

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1 March of 1998?

2 A. I saw Ms. Bullock on March 9, 1998 and  
3 March 27, 1998.

4 Q. For what complaints, please?

5 A. On March 9, she presented with complaints  
6 of increased urinary frequency and dysuria, pain with  
7 urination. She also gave a history of continuing to  
8 cough up, at that time without sputum production; and  
9 she also expressed at that time a wish to try the  
10 prescription medication Zyban to quit smoking.

11 Q. What did you think about her desire of  
12 wanting to quit smoking?

13 MR. LEITER: Objection. Vague.

14 THE COURT: Sustained.

15 BY MR. PIUZE:

16 Q. When she told you that she wanted to quit  
17 smoking, did you give her reinforcement that that might  
18 be a good thing?

19 A. Yes, I did.

20 Q. Why?

21 MR. LEITER: Objection. I'm sorry. What was  
22 the question?

23 BY MR. PIUZE:

24 Q. Why?

25 A. Because it's incumbent upon me, as a  
26 doctor, to strongly encourage my patients who smoke to  
27 quit smoking.

28 Q. Whether it's Betty Bullock, Sally Smith,

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1 Jimmy Jones, or anyone else, is it part of your training  
2 that when people come in and get anyplace near the  
3 subject of smoking, you tell them it's not a good thing?

4 A. Yes.

5 Q. And had that been your method of practice  
6 long before you moved down to San Juan Capistrano?

7 A. Yes, long before.

8 Q. When she told you that she wanted to quit  
9 smoking and that she wanted you to give her a  
10 prescription of some sort, did you?

11 A. Yes, I did.

12 Q. For Zyban?

13 A. Yes.

14 Q. Okay. And the next time you saw her,  
15 please tell us the date.

16 A. March 27, 1998.

17 Q. The complaints she gave to you, please.

18           A. Continues to have persistent cough and  
19 sputum. Still has superpubic or abdominal discomfort  
20 and pain and continues to cite painful urination.

21           Q. Was there any further medication given to  
22 her for anything?

23           A. Yes, there was.

24           Q. For what?

25           A. I changed -- I treated her with another  
26 course of antibiotics; originally treated with  
27 erythromycin, and on this date I changed and treated her  
28 with the antibiotic Floxin for ten days.

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1           Q. All of the medicines you just mentioned,  
2 were those for urinary-type problems?

3           A. Yes.

4           Q. Not for smoking cessation?

5           A. Not -- well, not for smoking cessation.

6 Floxin is not used for that.

7           Q. Right. So on the second visit, is there  
8 any mention there of any medication as far as smoking  
9 cessation is concerned?

10          A. She volunteered that she was currently  
11 using a nicotine patch.

12          Q. Now, was a nicotine patch something that  
13 you had prescribed her previously?

14          A. I had recommended it to her.

15          Q. Okay. Was that in addition to Zyban?

16          A. Yes.

17          Q. One of the things that you said before I  
18 gave you the chart was that you have independent  
19 recollections of Ms. Bullock without the chart.

20          A. Yes, I do.

21          Q. Do you recall that?

22          On these occasions in March of 1998, did  
23 you have discussions with Ms. Bullock about stopping  
24 smoking?

25          A. Yes, I did.

26          Q. In March of 1998, did Ms. Bullock confide  
27 in you her feelings, thoughts, state of mind about  
28 stopping smoking?

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1           A. Yes, she did.

2           Q. Do you have a pretty distinct recollection  
3 of that?

4           A. A very distinct recollection of that.

5           Q. Why is it now in 2002, I think we are like  
6 four and a half years later, that you have a very  
7 distinct recollection of that?

8           MR. LEITER: Objection. I think we are heading  
9 for some hearsay, and I want to make sure the answer  
10 isn't going to contain hearsay.

11          THE COURT: I am somewhat at a loss as to -- are  
12 you objecting to the particular question?

13          MR. LEITER: I am objecting to the particular  
14 question to the extent that it calls for hearsay.

15          THE COURT: I don't want to give the doctor a  
16 legal course in hearsay, so let's see if you can try a  
17 different question and maybe we will work it that way;  
18 because the real relevance is not why he remembers.

19          MR. PIUZE: Sure, of course.

20          THE COURT: So let's move on to something else.

21          MR. PIUZE: Well, I want to know what she said;  
22 and the reason I want to know what she said is I want to

23 know what her then existing state of mind was.

24 THE COURT: Then we are in hearsay.

25 MR. PIUZE: Absolutely. Sure.

26 THE COURT: And I will sustain the objection.

27 MR. PIUZE: Evidence Code 1250, your Honor.

28 THE COURT: Objection sustained.

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1 MR. PIUZE: May we approach on that?

2 THE COURT: You may.

4 (The following proceedings were held  
5 at sidebar:)

7 MR. PIUZE: EC 1250 is directly on point, and I  
8 asked the court to take a look at it. I know you are  
9 familiar with the Evidence Code, but there is a hearsay  
10 exception if a declarant states his or her then existing  
11 state of mind, feelings, physical sensations,  
12 psychological, anything, as long as it's then existing;  
13 and this is right smack on the -- right on the head,  
14 right on the nail.

15 MR. LEITER: Well, my understanding of what the  
16 answer of the question is going to be is it is not state  
17 of mind. State of mind does not obviate the matter as a  
18 rule.

19 He is going to testify about what she said  
20 for the truth of the matter asserted what, she believed  
21 about health risks, what she believed about her ability  
22 to quit smoking. This is not state of mind. It's just  
23 straight hearsay for the truth of the matter asserted.

24 Mrs. Bullock is testifying in this case.  
25 She is fully capable of testifying as to what she said,  
26 thought, believed in 1998. We don't need a hearsay  
27 witness to tell the jury what she said about that time.

28 MR. PIUZE: May I grab my Evidence Code? I've

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1 got it right under the bench.

2 THE COURT: Yes, you may.

3 (A pause in the proceedings.)

4 THE COURT: What section do you want me to  
5 read?

6 MR. PIUZE: 1250.

7 THE COURT: Okay.

8 (A pause in the proceedings.)

9 THE COURT: Objection sustained.

10 MR. PIUZE: Your Honor, before I leave here,  
11 because this is the reason I called him, if the court  
12 could share if it's reasonable of me, maybe I could say  
13 something further because -- I mean, this is the first  
14 time I have ever asked to approach the bench for an  
15 evidentiary reason because I don't understand why this  
16 doesn't fit exactly hand and glove.

17 I've got Jefferson here, and I know he's  
18 not the absolute king of the world, he's not Witkin, but  
19 her then existing state of mind, emotion --

20 THE COURT: Is relevant because?

21 MR. PIUZE: It's relevant because they say she  
22 did not try to quit hard enough. She could have quit,  
23 she should have quit, and this entire line of  
24 questioning is about how hard she tried, how guilt  
25 ridden she was because she couldn't, how she literally  
26 tore her heart out to try to stop smoking.

27 THE COURT: Is she not going to testify to

28 that?

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1 MR. PIUZE: Whether she can, whether she does or  
2 doesn't, your Honor -- and what -- she can't testify to  
3 it as well as this man can. She had severe cognitive  
4 problems, as this afternoon's witness will tell you.  
5 Her memory is shot and she is not as reliable a witness  
6 as this one is who knows this stuff well.

7 Even if she could, here is an independent  
8 witness who can verify this stuff.

9 MR. PIUZE: You are offering evidence now that  
10 is at best rebuttal evidence to evidence that has not  
11 been proffered. The objection is sustained. There is  
12 no question this witness, who is an elegant witness and  
13 maybe as good as I have ever heard, may very well -- may  
14 very well be able to testify in rebuttal to something  
15 once it has been raised, but it has not been raised yet  
16 in this court; and, therefore, the objection, as it has  
17 been phrased by counsel, is sustained.

18 MR. PIUZE: On straight hearsay because as we  
19 have been discussing, as your Honor went from hearsay to  
20 relevance --

21 THE COURT: That's true, I did; but the  
22 objection is on hearsay. The state of where we are  
23 is -- and based on your proffer -- is at best rebuttal  
24 evidence to refute a theory that you are articulating  
25 that they are going to offer, which they haven't yet;  
and so as of this moment and as of this question, the  
objection on hearsay is sustained.

28 Now, if they come up with the theory that

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1 you have mentioned and you want to bolster testimony as  
2 to how she tried, that's well and good, but we are not  
3 there yet. The objection is sustained.

4 MR. PIUZE: Okay.

5  
6 (The following proceedings were held  
7 in open court within the presence of  
8 the jury:)

9  
10 BY MR. PIUZE:

11 Q. Dr. Rodas, as I ask more questions, I'd  
12 like you not to quote Ms. Bullock. Okay?

13 And further, it isn't just quotes. I  
14 don't want you to give the content of what she said to  
15 you on the issue we are going to discuss. All right?

16 A. (Nods head affirmatively.)

17 Q. Confirm, please, that you had more than  
18 one lengthy two-way conversation with Ms. Bullock about  
19 quitting smoking?

20 A. Yes.

21 Q. Over the course of time -- this is no  
22 longer a Ms. Bullock question, your Honor; this is a  
23 general question -- over the course of time, do you  
24 treat people who smoke and have symptoms that you  
25 believe are a result of smoking?

26 A. Yes.

27 Q. Over the course of time, do you  
28 100 percent of the time, tell these people "stop"?

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1 A. No.

2 Q. Why not?

3 A. If they've got terminal lung cancer, in my

4 opinion, they are going to die anyway. There's no point  
5 in telling them not to smoke then.

6 Q. Good enough. Let's leave these people  
7 aside; and now we have people who don't have terminal  
8 lung cancer who come to you, and they've got symptoms  
9 that you think are as a result of smoking and they are  
10 smoking cigarettes, do you always tell them, "Hey, you  
11 should stop"?

12 A. I do.

13 Q. Do they?

14 A. No.

15 Q. Do some?

16 A. Some, yes.

17 Q. Some do, most don't?

18 A. That's correct.

19 Q. Do patients who come to you -- again, this  
20 is not Ms. Bullock, now, it is just generally. I will  
21 be coming back to Ms. Bullock.

22 Do patients who come to you with symptoms  
23 that you believe are related to smoking and who are  
24 smokers who you have told to stop, in your own view  
25 based on your experience in checking them out, do you  
believe they all try, really try to stop?

26 A. No.

27 Q. Are there occasions when smokers who come

1936

1 to you with symptoms you think are related to smoking  
2 and you have heard from them "I'm trying to stop,  
3 Doctor. I heard what you said. I'm trying to stop,"  
4 are there times where you think, "Well, probably not  
5 really trying that hard"?

6 A. Yes.

7 Q. Back to Ms. Bullock.

8 In your opinion, was Ms. Bullock trying  
9 real hard to stop smoking?

10 A. Yes.

11 Q. In your opinion, did she give it at least  
12 the old college try?

13 A. She gave more than that.

14 Q. Based on the things she told you -- I  
15 don't want you quoting things yet or at all. I don't  
16 want you quoting things, but based upon the things that  
17 she told you, did you believe that she was  
18 well-motivated to quit smoking?

19 A. Yes, I did.

20 Q. Was she somewhat successful over a period  
21 of time?

22 A. Yes.

23 Q. As we go through some of these chart  
24 entries here, will there be entries that say on several  
25 occasions she has either stopped for short periods of  
time or that she had cut back drastically for short  
periods?

26 A. Yes.

1937

1 Q. As a -- did you ever meet her daughter?

2 A. No.

3 Q. Did you have information that her daughter  
4 was involved in the stop-smoking process?

5 MR. LEITER: Objection. Calls for hearsay.

6 THE COURT: Sustained.

7 MR. PIUZE: I will withdraw it. I will withdraw  
8 it, your Honor.

9 Q. Were there -- were there issues aside from  
10 straight health issues that were involved in the  
11 stop-smoking process?

12 A. Yes.

13 Q. When you counsel people -- again, this is  
14 general now -- when you counsel people to stop smoking,  
15 they come in with a cough, bronchitis, whatever, and you  
16 tell them "This isn't good for you, you better stop" --

17 A. Yes, I do.

18 Q. -- what, if you can -- can you give us a  
19 percentage of people that you've seen who have  
20 successfully been able to stop?

21 A. Five percent.

22 Q. Do you offer words of encouragement or  
23 insight to smokers trying to stop?

24 A. Yes, I do.

25 Q. Again, this is not a Mrs. Bullock specific  
26 question; but generally, what kind of encouragement do  
27 you offer them, please?

28 A. Positive.

1938

1 Q. Okay.

2 A. Non-judgmental.

3 Q. All right.

4 A. Non-intimidating.

5 Q. Okay. So I guess I should know what that  
6 means; positive and non-judgmental and non-intimidating?

7 A. Yes. Would you like me to tell you what  
8 it is?

9 Q. Yeah.

10 A. I don't berate patients. I don't talk  
11 down to them. I don't take cigarettes out of their  
12 pockets and put them in the trash. I don't call them  
13 stupid. I don't do anything in that manner, because to  
14 me, that has no place in treating a patient.

15 The fact that they have even had the nerve  
16 to bring it up, in my opinion, calls upon me to be  
17 resourceful insofar as structuring an approach for that  
18 patient to try to get them to quit smoking.

19 Q. In regard to Ms. Bullock's smoking-related  
20 symptoms, did you structure an approach to her to try to  
21 get her to stop smoking?

22 A. Yes, I did.

23 Q. What?

24 A. Pharmacological approach?

25 Q. I'd like the whole approach, but let's  
26 start with pharmacological.

27 A. She first came to me about going on Zyban,  
28 and that her -- I believe her daughter was willing to

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1 pay for it if I prescribed it, because she really wanted  
2 to quit smoking and she was familiar with the product.

3 I told her that the way that it was  
4 prescribed and to be used was likely to be unsuccessful  
5 in her case unless she also used simultaneous patch  
6 nicotine replacement; and I structured it for her as to  
7 what dosage to take, on a certain day stop smoking, put  
8 on the patch, avoid contact with smokers, do not allow  
9 anybody to smoke around you, avoid the activities that  
10 made you smoke; but most importantly, quit kicking  
11 yourself because you do smoke.

12 Q. Why did you say, at the beginning of that  
13 answer, that because of something you thought Zyban

14 alone would be unlikely to work successfully?  
15 A. I felt Mrs. Bullock was very dependent on  
16 cigarettes and had done so for a long time; and that if  
17 nothing else, the absence of nicotine, the nicotine  
18 withdrawal, would favor her failing to quit; and I felt  
19 that we had more of a chance if simultaneous with the  
20 oral Zyban, we were also doing nicotine replacement. I  
21 didn't think it would work only with the Zyban.  
22 Q. Okay. As part of your discussions with  
23 Ms. Bullock, did you get a history from her of how much  
24 she was smoking?  
25 A. Yes.  
26 Q. Did you get a history from her of when she  
27 started to smoke?  
28 A. Yes.

1940

1 Q. What was that?  
2 A. As a teenager.  
3 Q. When you first saw her, was she someplace  
4 in the vicinity about 60 years old, round numbers?  
5 A. Yes.  
6 Q. After March, when is the next time that  
7 you saw Ms. Bullock?  
8 A. May I refer to the record?  
9 Q. Sure. And I will give you a hint. I have  
10 a feeling it was in April, but I could be wrong.  
11 A. April 20 of 1998.  
12 Q. So reasons, please, the reasons she was in?  
13 A. She came in for symptoms of urinary tract  
14 infection, complained of a sore throat, persistent  
15 coughing.  
16 Q. What did you do for her, please?  
17 A. I added a urinary antibiotic -- excuse  
18 me. April 20. There's a visit also April 6. I have an  
19 April 6 and an April 20.  
20 Q. Why don't we take a running start, then.  
21 Let's go back to the 6th, which I don't believe they  
22 have heard.  
23 A. Okay.  
24 Q. Tell the jury why she was in on the 6th,  
25 please.  
26 A. On the 6th of April, she came in because  
27 she was having to get up to urinate at night. She  
28 reported an improved cough on that date, told me that

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1 she had actually quit smoking, and that she had found  
2 Zyban had made a difference. She also complained of  
3 pain in her left elbow.  
4 Q. Thank you. Next day, which I believe you  
5 said was the 20th --  
6 A. The 20th was the next time I saw her.  
7 Q. -- what did you prescribe for her, if  
8 anything, that day?  
9 A. I restarted the antibiotic Floxin for the  
10 urinary tract infection and also prescribed a  
11 suppressive antibiotic for urinary tract infections,  
12 which is Macrodantin. I also drew some blood work on  
13 her that day.  
14 Q. When is the next time that you saw her,  
15 please?  
16 (A pause in the proceedings.)  
17 A. I apologize. If the chart was in  
18 chronological order, I could go right to it. Inasmuch

19 as it is not, I have to go through it page by page.  
20 (A pause in the proceedings.)  
21 A. The next visit I find I saw her on was  
22 November 10 of 1998.  
23 Q. The reason, please?  
24 A. She came in for her annual breast exam,  
25 Pap smear, but also once again had begun to complain of  
26 coughing up green-tinged sputum, and she volunteered  
27 that she had restarted smoking in August of 1998.  
28 Q. Did you prescribe any further anti-smoking

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1 aids to her at that time?  
2 A. According to my note, I did not.  
3 Q. During this time, sometimes would she be  
4 seen by one of your associate doctors?  
5 A. Yes.  
6 Q. Especially, I'm going to mangle this name  
7 again now, Dr. Poniachik?  
8 A. Yes.  
9 Q. Are his notes also in there as part of  
10 your office's charts?  
11 A. Yes, they are.  
12 Q. When you treated Ms. Bullock and she had  
13 seen your associate in between, did you rely upon his  
14 chart notes to help you treat her?  
15 A. Yes.  
16 Q. Did his chart notes also contain mentions  
17 of stop-smoking issues, please?  
18 (A pause in the proceedings.)  
19 Q. If I could give you a cue, I would be  
20 thinking maybe around December '98, May, '99, September  
21 '99 would be the kind of the dates.  
22 A. Okay.  
23 (A pause in the proceedings.)  
24 A. I have notes from Dr. Poniachik in May  
25 '99, September '99, October '99.  
26 Q. What were the reasons -- let's take them  
27 chronologically. Okay? -- the reasons Ms. Bullock was  
28 in on the first occasion, please?

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1 A. Okay. And I misspoke. There was also one  
2 on 12 of '98, so that will be the first one.  
3 Q. Okay.  
4 A. 12 of '98 from the chart notes that  
5 Dr. Poniachik produced that day, his assessment included  
6 bronchitis, abdominal pain, and rectal discharge.  
7 Q. Okay. And because of our issues here  
8 being smoking and smoking cessation and bronchitis,  
9 those kinds of issues, what did Dr. Poniachik prescribe  
10 or say on the chart she should do on those issues?  
11 A. He is -- the subjective part of his note  
12 has "positive tobacco" written on it. Under his plan  
13 where he has bronchitis, number one says, "The  
14 antibiotic Bactrim DS," twice daily, and his sub plan  
15 number two, it says "discontinue tobacco."  
16 Q. Okay. The next time, please -- remind us  
17 of the date.  
18 A. May 20, 1999.  
19 Q. Can you tell us the reasons for which  
20 Dr. Poniachik saw Ms. Bullock that day?  
21 A. Complaint of painful urination, cough,  
22 wheezing.  
23 Q. And the plan, as far as the cough/wheezing

24 issues are concerned?

25 A. Antibiotic Bactrim DS, twice daily, and  
26 discontinue tobacco, and a prescription for Zyban 150  
27 milligrams twice daily.

28 Q. The next date, if you could remind us of

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1 it, please?

2 A. September 10 of 1999.

3 Q. The complaints for which Dr. Poniachik saw  
4 Ms. Bullock on that date, please?

5 A. Production of yellow mucous and chest pain.

6 Q. The prescriptions, if any, in regard to  
7 those symptoms?

8 A. Amoxicillin 500 milligrams three times  
9 daily for a week, rest, fluids, the cough medicine  
10 Finergin with codeine. I believe he has Tylenol. He  
11 checked some blood work, and he has indicated on his  
12 progress notes "smoking cessation."

13 Q. Thank you. Now, you told us earlier the  
14 last date that you saw Ms. Bullock, and I believe it was  
15 a date in 2000.

16 Do you recall that?

17 A. Yes.

18 Q. Do you have that note?

19 A. I can find it. 12-29-2000.

20 Q. The reason, please?

21 A. She came in that day to follow up on  
22 elevated cholesterol, two- to three-week history of  
23 cough, right earache, and once again said wishes to try  
24 Zyban to quit smoking.

25 Q. What did you do in response to that?

26 A. I treated her with the antibiotic  
27 amoxicillin and with the bronchial dilator Volmax  
28 because I appreciated wheezing in her chest, refilled

1945

1 her cholesterol medication, and by this time she could  
2 not get the Zyban anymore.

3 So I dispensed to her what I did have,  
4 which was a sample of Wellbutrin, which is the same  
5 medicine under a different brand name.

6 Q. Why could she not get the Zyban?

7 A. I think her daughter wouldn't pay for it  
8 anymore.

9 Q. Is Wellbutrin an antidepressant?

10 A. It is.

11 Q. Does Zyban -- is Zyban exactly the same as  
12 Wellbutrin?

13 A. They are alike in everything but brand  
14 name.

15 Q. You gave her a freebie sample out of your  
16 office in order to help her try to stop smoking?

17 A. Yes, I did.

18 Q. The last time you ever saw Ms. Bullock --  
19 and by the way, is that the last time you ever saw  
20 Ms. Bullock?

21 A. Let me double-check.

22 (A pause in the proceedings.)

23 A. From what I have in the chart here, yes,  
24 that was the last time I saw Ms. Bullock.

25 Q. Okay. So between late '97 and late 2000,  
26 during those four years that you saw Ms. Bullock, was a  
27 recurring theme her desire to stop smoking?

28 A. Yes.

1 Q. Is it your statement to the jury that you  
 2 believe she really tried to stop smoking during that  
 3 period?

4 A. Yes.

5 Q. I don't want any quotes now or any content  
 6 of conversations. I will caution you in advance.

7         Earlier in my questioning of you, you said  
 8 that you had a clear recollection independent of your  
 9 records of these things. Is it possible for you to tell  
 10 us why you have a clear recollection of these things  
 11 without going into the content of the discussions,  
 12 please?

13         A. She was very vocal about it. She brought  
 14 it up every visit. She was very distressed over her  
 15 inability to quit smoking.

16         Q. At any point during the four years that  
 17 you treated her, did you ever, in your view, look at her  
 18 and say, "Here's some woman who won't follow my advice"?

19 A. No.

20 Q. Once even did you think that?

21         A. She tried to follow my advice. She didn't  
 22 follow it.

23 MR. PIUZE: No further questions.

24 THE COURT: Cross-examination.

25 MR. LEITER: Thank you, your Honor.

26         Good morning.

27                     (All respond.)

1 \*                     CROSS-EXAMINATION

2 BY MR. LEITER:

3         Q. Good morning, Dr. Rodas.

4         A. Good morning, sir.

5         Q. We met some time ago at your deposition in  
 6 this case?

7         A. Yes, we did.

8         Q. I want to follow up on some of the  
 9 questions that Mr. Piuze asked you this morning. You  
 10 first treated Mrs. Bullock in, I believe, December of  
 11 1997; is that right?

12         A. That's correct.

13         Q. Okay. And at that time, one of your  
 14 diagnoses of her was that she had COPD?

15         A. Yes.

16         Q. And that's chronic obstructive pulmonary  
 17 disease?

18         A. Yes.

19         Q. Potentially fatal disease?

20         A. Eventually, yes.

21         Q. Very, very serious disease?

22         A. Yes.

23         Q. Caused by smoking?

24         A. In my opinion, yes.

25         Q. Okay. And you discussed that diagnosis  
 26 with Mrs. Bullock on that day; isn't that right?

27         A. Yes, I did.

1         Q. You told her that she had COPD?

2         A. What I would have used with her is the  
 3 term "bronchitis."

4         Q. Okay. You told her that it was a serious

5 problem?  
6 A. Yes.  
7 Q. And you told her that it was caused by  
8 smoking?  
9 A. Yes, I did.  
10 Q. And you told her that she needed to quit  
11 smoking?  
12 A. Yes, I did.  
13 Q. You next saw Mrs. Bullock on March 9, I  
14 think you mentioned earlier; and if you want to take a  
15 minute and find the chart, that would be great.  
16 (A pause in the proceedings.)  
17 A. March 9, 1998.  
18 Q. Okay. And I think you mentioned in the  
19 questioning earlier this morning that on that date, you  
20 diagnosed her as having bronchitis?  
21 A. Yes, I did.  
22 Q. And the bronchitis represented a worsening  
23 of the COPD, right?  
24 A. Yes.  
25 Q. And you told Mrs. Bullock that?  
26 A. I would have used the word "bronchitis" or  
27 "chronic bronchitis."  
28 Q. But you told her the situation was getting

1949

1 worse?  
2 A. I don't recall specifically using that  
3 phrase with her.  
4 Q. Okay. But you told her that she had a  
5 serious bronchial problem?  
6 A. Yes, I did.  
7 Q. Okay. And that, I believe, is when you  
8 first diagnosed -- excuse me -- first prescribed Zyban  
9 for her?

10 A. At her request.  
11 Q. At her request.

12 Now, let's talk for a minute about Zyban.  
13 Zyban is a prescription drug, right?

14 A. Yes, it is.  
15 Q. And it's designed to help reduce the  
16 cravings for nicotine?

17 A. It is.  
18 Q. Okay. And it's similar to a nicotine  
19 patch or a nicotine gum in that they are also designed  
20 to reduce the cravings for nicotine?

21 A. Through different mechanisms, but yes.  
22 Q. Okay. Using a drug like Zyban, in your  
23 opinion, is not in and of itself enough for somebody to  
24 successfully quit smoking?

25 A. I did not feel that in this patient it was  
26 enough.

27 Q. Okay. Sometimes it might be --  
28 A. Yes.

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1 Q. -- but other times it's not?  
2 A. Correct.  
3 Q. Okay. I believe in your deposition we  
4 talked about behavioral lifestyle changes that are  
5 necessary as well, right?  
6 A. We did.  
7 Q. And you would agree that for anybody who  
8 uses Zyban, it's important also to make changes in your  
9 lifestyle?

10           A. It is true of Zyban as many other  
11 medicines, correct.  
12           Q. And a lot of medicines -- medicines aren't  
13 wonder drugs?  
14           A. No, they are not.  
15           Q. Okay. A person, the smoker in this case,  
16 has to help the drug work?  
17           A. Actually, the drug helps the patient work.  
18           Q. Okay. Fair enough.  
19           And it's important for somebody using  
20 Zyban to try to quit smoking to also make some lifestyle  
21 changes, right?  
22           A. Absolutely true.  
23           Q. And you discussed some of those lifestyle  
24 changes with Mrs. Bullock on that date, didn't you?  
25           A. I did.  
26           Q. And the lifestyle changes would include  
27 figuring out what in the day triggers your desire to  
28 have a cigarette, for example, some people like a

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1 cigarette after a meal, right?  
2           A. Correct.  
3           Q. To know that you are going to want a  
4 cigarette after a meal and to deal with that in some  
5 other way, right?  
6           A. Correct.  
7           Q. To recognize when the trigger is coming?  
8           A. Correct.  
9           Q. To set a quit date?  
10          A. I did.  
11          Q. Okay. And to reward yourself when you get  
12 to your quit date, maybe throw a party?  
13          A. I don't typically recommend that.  
14          Q. Okay. But to set a quit date, to set a  
15 goal and try to reach that goal?  
16          A. Yes.  
17          Q. And to take away the temptation to smoke,  
18 if you can, in the meantime, right?  
19          A. That's correct.  
20          Q. Throw away the cigarettes?  
21          A. Yes.  
22          Q. Throw away the ashtrays?  
23          A. Yes.  
24          Q. Throw away the matches?  
25          A. Yes.  
26          Q. Throw away the lighters?  
27          A. Whatever is associated with smoking for  
28 them, pitch it.

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1           Q. And Zyban helps the patient quit smoking,  
2 and the behavioral changes are important too, right?  
3           A. That's correct.  
4           Q. Okay. And you discussed that with  
5 Mrs. Bullock on March 9?  
6           A. Yes.  
7           Q. Okay. You mentioned that you next saw her  
8 on April 6; and you might want to take a minute and find  
9 that, and I'd like to show this one to the jury.  
10          So, your Honor, this is marked as  
11 Exhibit 12291.  
12          MR. PIUZE: May I inquire? Is this just one  
13 page out of the records, or is that for the whole  
14 record?

15           MR. LEITER: I am going to offer three or four  
16 individual pages from the record.

17           THE COURT: Okay. Now, let's make sure we -- I  
18 am doing the right notation. 12291 is what in its  
19 entirety?

20           MR. LEITER: Is the portion of the chart --  
21 Dr. Rodas's Camino Health Center chart dated April 6,  
22 1998.

23           THE COURT: Okay. Hold on.

24           (A pause in the proceedings.)

25           THE COURT: And you are going to be showing him  
26 some individual pages from the April 6, 1998 chart?

27           MR. LEITER: No, your Honor. The April 6, 1998  
28 chart is one piece of the entire medical chart that

1953

1 Dr. Rodas has before him.

2           THE COURT: Okay.

3           MR. LEITER: So I am marking individual pages  
4 that I'd like to show the jury.

5           THE COURT: So I just want to find out, Exhibit  
6 12291 is an individual page?

7           MR. LEITER: Yes, your Honor.

8           THE CLERK: What is the page number, your  
9 Honor?

10          THE COURT: 12291 is a page -- I am trying to  
11 find this out myself -- from the April 6, 1998 chart of  
12 the plaintiff.

13          MR. LEITER: Actually, it is the April 6, 1998  
14 chart, but it's a portion of the complete set of medical  
15 records. I'm sorry if I wasn't clear.

16          THE COURT: Okay. 12291 is the chart of the  
17 plaintiff for April 6, 1998?

18          MR. LEITER: Yes.

19          THE COURT: Okay.

20          MR. LEITER: And I would like to offer it so I  
21 may show it to the jury.

22          THE COURT: Is there any objection?

23          MR. PIUZE: No.

24 \*         (Marked for identification Joint  
25           Exhibit number 12291, document.)

28          THE COURT: First time I have ever heard anybody

1954

1 say no with a question mark at the end of it.

2           MR. PIUZE: It was actually a semicolon. It was  
3 no. I hate to be paranoid about spoon-feeding selective  
4 little pieces, but I think at some point I will offer  
5 the whole chart and then this would be duplicative; and  
6 I didn't want to say that out loud, but that's what my  
7 thinking is.

8           THE COURT: Well, you certainly have the right  
9 to offer the whole chart, and whether it's received or  
10 not, may in and of itself be duplicative; but as to  
11 12291, it is offered in evidence and it is received.

12 \*         (Received in evidence Joint  
13           Exhibit number 12291, document.)

16          THE COURT: You may show it to the jury.

17          MR. LEITER: Thank you, your Honor.

18          Q. Dr. Rodas, is this the April 6, 1998 chart  
19 that you have been referring to?

20           A. Yes, it is.  
21           Q. And you have been refreshing your  
22 recollection in part by looking at this chart about your  
23 April 6, 1998 visit with Mrs. Bullock, right?  
24           A. Yes.  
25           Q. Okay. And as you mentioned when Mr. Piuze  
26 was questioning you, this was about three weeks after  
27 you had first prescribed Zyban to Mrs. Bullock, right?  
28           A. Yes.

1955

1           Q. And she reported -- my coloring skills are  
2 not very good, as my kids tell me. She reported on that  
3 day that she has quit smoking -- it doesn't come out --  
4 "has quit smoking and finds Zyban makes a real  
5 difference." Is that right?

6           A. That's correct.

7           Q. Okay. You next saw her on April 20 of  
8 1998; is that right?

9           A. Yes.

10          MR. LEITER: And I'd like to offer that chart  
11 as well, which is Exhibit 12292.

12          THE COURT: Any objection?

13          MR. PIUZE: No.

14          THE COURT: All right. It may be received.

15          \*       (Received in evidence Joint  
16                   Exhibit number 12292, document.)

19          MR. LEITER: I am not going to try to color  
20 this time.

21          Q. Is this the chart that you have been  
22 referring to?

23          A. Yes.

24          Q. Okay. And on April 20, 1998, which was a  
25 couple of weeks after the visit we were talking about,  
26 Mrs. Bullock reported that she was "still on Zyban" and  
27 I don't know what that says, do you?

28          A. "2/D," two per day.

1956

1           Q. So she says she is taking two Zybans per  
2 day and sneaks a few cigarettes, quote, here and there?

3          A. Parenthesis --

4          Q. Eight per day; is that right?

5          A. That's correct.

6          Q. So she on April 20 reported she was still  
7 taking the Zyban, as you had prescribed, right?

8          A. Yes.

9          Q. And while she was smoking about eight  
10 cigarettes a day, that was far, far less than she had  
11 been smoking before you prescribed Zyban, right?

12          A. That's correct.

13          Q. I have three more that I would like to  
14 show you. The next one is the chart that you referred  
15 to earlier on November 10, 1998, which is  
16 Exhibit 12293.

18          \*       (Marked for identification Joint  
19                   Exhibit number 12293 document.)

21          MR. LEITER: I am offering that, your Honor.

22          THE COURT: Any objection?

23          MR. PIUZE: No.

24          THE COURT: It may be received.

25  
26 \* (Received in evidence Joint  
27 Exhibit number 12293, document.)  
28

1957

1 BY MR. LEITER:

2 Q. Do you have that before you, Dr. Rodas,  
3 from your copy?

4 A. I sure do.

5 Q. Is this the chart that you are --

6 A. Yes.

7 Q. Okay. And this reports on Mrs. Bullock's  
8 visit of 11-10, November 10, 1989; is that right?

9 A. Yes.

10 Q. So it's a few months later from the last  
11 one that we saw?

12 A. It is.

13 Q. Okay. And in that visit Mrs. Bullock  
14 reported that she quit smoking 6-8-98; is that right?

15 A. Yes.

16 Q. So she had quit smoking for somewhere  
17 around two or three months, right?

18 A. Yes.

19 Q. Okay. And then started again, right?

20 A. That's correct.

21 Q. Okay. We are going to jump ahead in time  
22 a little bit to another chart that you mentioned  
23 earlier, which is November 9 of 2000, which is  
24 Exhibit 12294, which I am offering.

25 THE COURT: Any objection?

26 MR. PIUZE: No.

27 THE COURT: It may be received.

28

1958

1 \* (Received in evidence Joint  
2 Exhibit number 12294, document.)  
3

4 MR. LEITER: I will wait until you are ready.

5 THE WITNESS: Actually, I would like that up  
6 there.

7 MR. LEITER: Do you have it?

8 THE WITNESS: No, I don't.

9 BY MR. LEITER:

10 Q. November 9, 2000. Is this one of the ones  
11 you were looking at earlier? I don't want to make you  
12 twist around and look at the screen. I know it's  
13 difficult from there, so if you want to take a minute  
14 and find it.

15 (A pause in the proceedings.)

16 A. What date is this, 9-23?

17 Q. No. I'm sorry. It's 11-9-20.

18 A. 11-9-2000.

19 (A pause in the proceedings.)

20 A. Can I see the bottom on that?

21 Q. Actually, why don't I hand it up to you.  
22 It might be easier than you twisting around and looking  
23 at the screen.

24 A. That is Dr. Wong's note. I was looking  
25 for one of mine.

26 Q. Okay.

27 (A pause in the proceedings.)

28 A. There it is.

1959

1 Q. Do you have it?  
2 A. Sorry about the delay.  
3 Q. No problem.  
4 This is the chart, Exhibit 12294, from  
5 November 9, 2000, right?  
6 A. Correct.  
7 Q. And this, I think you mentioned when  
8 Mr. Piuze was questioning you, was Mrs. Bullock's visit  
9 with Dr. Wong?  
10 A. Correct.  
11 Q. And on that date Mrs. Bullock reported,  
12 "patient quit then restarted smoking three to four  
13 cigarettes a day"; is that right?  
14 A. That's correct.  
15 Q. So she was smoking, but far, far less than  
16 before you started treating her, right?  
17 A. Yes.  
18 Q. And the next line is "Wants to quit;  
19 requesting nicotine gum and patches," right?  
20 A. Correct.  
21 Q. The last one that I'd like to show you is  
22 the chart from December 4, 2000; and I believe this is  
23 not one of yours. This is another of the doctors that  
24 you mentioned earlier. It's Exhibit 12295, dated  
25 December 4, 2000, which I offer.  
26 THE COURT: Any objection?  
27 MR. PIUZE: No.  
28 THE COURT: It may be received.

1960

1 \* (Received in evidence Joint  
2 Exhibit number 12295, document.)  
3  
4 MR. LEITER: Maybe if I can approach, I will  
5 show you which one it is.  
6 (A pause in the proceedings.)  
7 A. This is it.  
8 Q. Okay. Thank you.  
9 This is Exhibit 12295; and, Dr. Rodas,  
10 this is Mrs. Bullock's chart for what appeared to be  
11 December 4, 2000; is that right?  
12 A. Yes.  
13 Q. And on that day Mrs. Bullock reported  
14 that she is on Zyban. I assume that means she is taking  
15 Zyban, yes?  
16 A. Yes.  
17 Q. Has been able to cut down on smoking to  
18 three per day; is that what that says?  
19 A. Yes.  
20 Q. So she is down to three cigarettes a day;  
21 is that right?  
22 A. Correct.  
23 Q. And I am done asking you about that record.  
24 Now, Dr. Rodas, Zyban helped?  
25 A. Yes.  
26 Q. Okay. Apparently, Mrs. Bullock did not  
27 stop smoking completely and permanently while she was  
28

1961

1 under your care, right?  
2 A. That's correct.  
3 Q. But she was able to dramatically cut down  
4 on the amount of smoking that she did?  
5 A. Yes.

6 Q. And was able to fully stop for, it appears  
7 at one point, two or three months?

8 A. By her history, yes.

9 Q. Okay. Now I'd like you to assume for just  
10 a moment, Dr. Rodas, that Mrs. Bullock has testified in  
11 this case that she never threw out her cigarettes, never  
12 threw out her ashtrays. That would be inconsistent with  
13 your advice to her, wouldn't it?

14 A. Yes, it would.

15 MR. LEITER: Thank you, Dr. Rodas. No further  
16 questions.

17 THE COURT: Redirect?

18 \* REDIRECT EXAMINATION

19 BY MR. PIUZE:

20 Q. Have you heard anything that changes your  
21 mind about the fact that she tried real, real hard to  
22 quit?

23 A. No.

24 Q. Is part of being a good doctor being able  
25 to eyeball someone, take a look at someone, figure out  
26 who is BS-ing you and who isn't?

1962

1 A. A good doctor or a good lawyer I suppose,  
2 yes.

3 Q. Did you take that into account in what you  
4 were telling the jury just now?

5 A. Yes, of course.

6 MR. PIUZE: Your Honor, I don't have any further  
7 questions right now. Before we let the doctor step  
8 down, though, I apologize to everyone. I would like to  
9 approach the bench briefly, please. Can we do that?

10 THE COURT: Surely. We will do that in a  
11 minute. We will take our morning recess at this time,  
12 and then we don't have to be crawling all over  
13 everything.

14 I would admonish the jury not to discuss  
15 this case amongst yourselves or with anyone else. Do  
16 not form or express any opinion on the matter until it's  
17 finally submitted to you. We will be in recess for 15  
18 minutes.

19  
20 (The following proceedings were held  
21 in open court outside the presence  
22 of the jury:)

23  
24 THE COURT: Yes, sir?

25 MR. PIUZE: All I want to do is the following:  
26 A, for the record, an offer of proof. The  
27 information that I wished to elicit was that  
28 Mrs. Bullock expressed profound guilt, shame,

1963

1 embarrassment, and remorse, extreme remorse, over her  
2 inability to quit smoking after numerous occasions.

3 Next, that this witness told her not to  
4 get down on herself and explained his reasons why.

5 And I'd -- I may want to ask that one.

6 Is that allowable or not allowable?

7 THE COURT: The latter part he has already  
8 testified to; and my understanding is that he told her  
9 on numerous occasions not to get down on herself, that  
10 he didn't shame her or make her feel inferior because

11 she was not able to quit smoking. I think that was his  
12 testimony earlier, at least that's my recollection of  
13 it.

14 If you wish to ask him that again, I have  
15 no problem with that except for the fact that I think it  
16 was repetitive and counsel may have some objections.

17 MR. PIUZE: I purposely backed off on the  
18 question because I know included in there would be  
19 things like, "You are addicted, you are hooked, this  
20 stuff is highly addictive."

21 THE COURT: That's what he would say to her?

22 MR. PIUZE: Yes, sir.

23 THE COURT: I will not permit that; and I  
24 appreciate you put that on the record and it should be  
25 part of your record.

26 MR. PIUZE: I am not making a big deal of that  
27 here. I'm just letting the court know that I spun the  
28 question in a nice gentle way before to get around that.

1964

1 THE COURT: No. I mean the part of what she  
2 would have testified if she was allowed to testify  
3 should be on the record.

4 MR. PIUZE: Sure it should.

5 THE COURT: No question about it.

6 MR. PIUZE: Thank you.

7 Also what I'd like to do is mark that  
8 medical record as Plaintiff's Exhibit 8511 -- excuse  
9 me -- 8271.

10 THE COURT: 8271 is the entire record?

11 MR. PIUZE: Sure.

12 THE COURT: The entire chart?

13 MR. PIUZE: Yes, sir. And last --

14 THE COURT: Wait. 8271, entire chart of  
15 plaintiff. Okay.

16 THE CLERK: I'm sorry. Which chart?

17 THE COURT: I will do it again.

18 THE CLERK: Okay.

19 THE COURT: 8271 is the entire chart of the  
20 plaintiff from which pages 12291 through 12295 have been  
21 extracted.

22 MR. PIUZE: Mr. Rivas, this is Camino Health  
23 Center Chart.

24 THE CLERK: Thank you, Counsel.

25 THE COURT: Okay.

26 MR. PIUZE: Your Honor, I am not offering it at  
27 this time, but I would like it marked.

1965

1 \* (Marked for identification Joint  
2 Exhibit number 8271, document.)

3

4 THE COURT: That's fine.

5 MR. PIUZE: What I propose to do is ask  
6 Mr. Rivas to release this to my custody so I can make a  
7 copy without all of my clips and everything else in it.

8 THE COURT: Okay.

9 MR. PIUZE: Last, I would ask that this witness  
10 not be excused at this time in light of the court's  
11 ruling about what might happen later, but I'd ask that  
12 the witness certainly be allowed to leave at this time  
13 because I have no further questions at this time.

14 MR. LEITER: No objections.

15 THE COURT: Do you understand what he is

16 saying?

17 THE WITNESS: Not really.

18 THE COURT: Okay. You go today.

19 THE WITNESS: Okay.

20 THE COURT: But you are still under order that  
21 you may be asked to return at a later date if additional  
22 testimony becomes necessary.

23 THE WITNESS: I see.

24 THE COURT: Okay. Thank you very much for  
25 coming. We appreciate it. Make sure you unwire  
26 yourself. Thank you very much, sir.

27 THE WITNESS: Sure.

28 MR. PIUZE: That's it.

1966

1 (A recess was taken in the proceedings.)  
2  
3  
4 (The following proceedings were held  
5 in open court within the presence of  
6 the jury:)

7  
8 THE COURT: The record will reflect the jury is  
9 present and in the courtroom, all counsel are present.

10 Mr. Piuze, you may call your next witness.

11 MR. PIUZE: Plaintiff calls Phillip Wulff.

12 THE COURT: Mr. Wulff, would you be kind enough  
13 to come right here next to where I am, face me, and  
14 raise your right.

15 Do you solemnly state the testimony you  
16 may give in the cause now pending before this court will  
17 be the truth, the whole truth, and nothing but the  
18 truth, so help you God?

19 THE WITNESS: I do.

20 THE COURT: Would you be seated. We are going  
21 to give you a microphone, but it doesn't quite work the  
22 way we'd like it to, so you are going to have to talk in  
23 a loud, clear voice.

24 THE WITNESS: I have a pretty strong voice.

25 THE COURT: Normally people don't use it when  
26 they are in here, for some reason or another. They all  
have loud strong voices, and then they all start talking  
softer and softer and nobody can hear them.

1967

1 (Laughter.)

2 THE COURT: So listen carefully to the questions  
3 the lawyer asks of you. Answer only what he asks. Take  
4 a heartbeat before you answer so that counsel on the  
5 other side of the table can object if they wish; and if  
6 they say "objection," you stop in the middle of a word  
7 and just. . .

8 Make sure that you are not talking over  
9 the questioner, because the court reporter can only take  
10 one voice at a time. So it's important that you let him  
11 finish and then you start your answer, and it's  
12 important that he let you finish and then he starts his  
13 question.

14 Now, for the record, would you state your  
15 full name, and in a loud, clear voice spell both your  
16 first and last name.

17 THE WITNESS: Okay. Full name is Phillip  
18 Sheridan Wulff, Sr. Phillip is P-h-i-l-l-i-p. I will  
19 skip the spelling of the middle one -- you want it?  
20 S-h-e-r-i-d-a-n. Wulff, W-u-l-f-f.

21           THE COURT: Thank you, sir.  
22

23 \*           PHILLIP S. WULFF, SR.

24 Called by the plaintiff as a witness, was sworn and  
25 testified as follows:

26           THE COURT: Go ahead, please.

27           MR. PIUZE: Thanks.

1968

1           \*           DIRECT EXAMINATION  
2

3           BY MR. PIUZE:

4           Q.     Good morning.

5           A.     Good morning.

6           Q.     Sir, where do you live?

7           A.     I live in [DELETE].

8           Q.     Are you employed?

9           A.     Yes, sir.

10          Q.     By whom?

11          A.     By the U.S. Government Department of the  
12         Interior, the Bureau of Land Management.

13          Q.     What do you do for the U.S. -- I can see  
14         you are ready to jump on my question and it's only a  
15         third of the way there.

16          What do you do for the U.S. Government  
17         Department of the Interior, Bureau of Land Management,  
18         please?

19          A.     Well, I do a lot of different things, but  
20         part of which I facilitate large meetings, especially  
21         controversial-type issues. I work with conflict  
22         resolution. I sometimes get involved in mediation;  
23         disputes between people, two parties, sometimes groups,  
24         that kind of stuff.

25          Q.     What's your occupation or profession,  
26         please?

27          A.     Organizational development specialist is

1969

2           my title.

3           Q.     Are you a psychologist?

4           A.     Well, I don't really call myself a  
5         psychologist. I have a master's degree in guidance and  
6         counseling and additional work on my Ph.D, but I am not  
a psychologist.

7           Q.     Were you once married to Betty Bullock?

8           A.     Yes, sir.

9           Q.     When you were once married to Betty  
10         Bullock, I guess her name must have been Betty Wulff?

11          A.     Yes.

12          Q.     Where did you grow up?

13          A.     South Dakota; Watertown, Bryant, that  
14         area. Eastern part.

15          Q.     Most of us probably don't know much about  
16         Watertown and Bryant, but why don't you give us a little  
17         thumbnail. Are those little teeny farm towns, or are  
18         those towns of 5,000 or what, please?

19          A.     Well, I was born in Bryant. I lived there  
20         the first ten years of my life, and it's a small town of  
21         about 500 people; and then spent the rest of my growing  
22         up in Watertown, a town of about 15,000. Rural  
23         community, pretty much dependent on the agricultural  
24         commodities they could raise.

25          Q.     How old were you when you first knew Betty

26 Bullock?

27 A. It would have been 49 years ago now, 1953,  
28 beginning of my sophomore year in high school. I was 15

1970

1 at the time.

2 Q. Were the two of you in the same grade?

3 A. Yes.

4 Q. Did you know Betty Bullock, do you  
5 remember -- how many years did you go to Watertown High  
6 School?

7 A. I went four years until I graduated in  
8 '56.

9 Q. Okay. Did you know her -- whatever year  
10 that you just gave me, would that make it that you knew  
11 her two years or three years during high school?

12 A. Three years of high school. She came from  
13 the Catholic school and moved in as sophomore because  
14 they had nine years of Catholic school.

15 Q. Okay. While you knew her in Watertown,  
16 were you ever her boyfriend or were you just a friend?

17 A. Boyfriend.

18 Q. Boyfriend?

19 A. You bet.

20 Q. During high school, did she take up  
21 smoking?

22 A. My best recollection is, yes, to some  
23 extent in -- the spring of '56, before we graduated,  
24 there was a lot of kids experimenting with things like  
25 smoking, and she did.

26 Q. Can you give the jury -- before I go  
27 further, I bet you never took notes in 1956 about how  
28 many cigarettes Betty Bullock was smoking so you could

1971

1 come back here 40-something years later and discuss it.

2 A. No. Sure didn't.

3 Q. Can you give the jury an idea, roughly,  
4 how much you recall Betty Bullock smoking during the  
5 senior year in high school.

6 A. Well, my best estimation would be  
7 somewhere around a half a pack. I mean, you know, it's  
8 casual use and special occasions type of thing like  
9 parties, and we would party most of the time. You know,  
10 we had our parties. Every evening we'd get together, a  
11 bunch of kids, and get together and dance and have a  
12 good time.

13 Q. Did you both graduate high school at  
14 around the same time?

15 A. Yes. Same year, '56.

16 Q. Were you smoking in high school?

17 A. No.

18 Q. Before you ever got to high school, had  
19 you done some experimenting with cigarettes?

20 A. Oh, yeah, as a little kid.

21 Q. How old were you when you did your  
22 experiment?

23 A. This might sound crazy, but --

24 MR. LEITER: Objection. Relevance.

25 THE COURT: Sustained.

26 BY MR. PIUZE:

27 Q. During the time that you knew Betty  
28 Bullock during high school, would it be true to say you

1972

1 didn't smoke cigarettes?

2 A. That's right.  
3 Q. When she graduated from high school, did  
4 she leave Watertown, South Dakota?  
5 A. Yes.  
6 Q. For California?  
7 A. Yes.  
8 Q. Did you stay in South Dakota?  
9 A. Yes.  
10 Q. When is the next time you saw her, please?  
11 A. It would have been early summer of '57.  
12 Q. The year after getting out of high school?  
13 A. Right.  
14 Q. Did you see her like one time when you  
15 were passing on the street, or did you see her regularly  
16 that summer?  
17 A. Regularly that summer.  
18 Q. Was she still smoking cigarettes?  
19 A. Yes.  
20 Q. Approximately with what frequency?  
21 A. Well, it's hard to recollect, but I do  
22 remember that there was an increased use when she came  
23 back from California; and she had changed in the sense  
24 that she was -- not necessarily for the better. I guess  
25 that's the best I can say. A little more calloused as a  
26 person and. . .  
27 Q. All right. Not -- no longer a little farm  
28 girl?

1973

1 A. Right.  
2 Q. Now a Californian.  
3 (Laughter.)  
4 Q. Anyway, did you -- do you think now,  
5 looking back on it, that when you saw her the year after  
6 she graduated from high school and you spent time with  
7 her that summer, that she was smoking more than she had  
8 been before?  
9 A. Yes. I would say that she probably was,  
10 to my best recollection, was smoking more when she came  
11 back than what she did when she left.  
12 Q. At the end of that summer, did she leave  
13 South Dakota again?  
14 A. Yes. Yes. We both left South Dakota at  
15 that time.  
16 Q. And did you both head for California?  
17 A. Well, I joined the Marine Corps with some  
18 friends of mine and I was stationed in San Diego, and  
19 she came to Southern California with some girlfriends at  
20 that time.  
21 Q. So you both wound up in Southern  
22 California but very different kinds of places?  
23 A. Yes. She was in Pasadena. I was in  
24 San Diego.  
25 Q. How long were you in the Marine Corps,  
26 please?  
27 A. Three years.  
28 Q. And during the time you were in the Marine

1974

1 Corps, where were you stationed?  
2 A. I was at Camp Pendleton and later at  
3 Marine Recruit Depot.  
4 Q. And was the Marine Corps Recruit Depot  
5 someplace in the San Diego area?  
6 A. Yes.

7 Q. During the time, the three years that you  
8 spent in the Marine Corps here in Southern California,  
9 did you have occasion to see Betty Bullock in Southern  
10 California?

11 A. Almost every weekend, yes.

12 Q. Would you come up here to see her, would  
13 she go down there to see you, or a little of both?

14 A. No. I would go up there pretty much.

15 Q. During those three years, what part of  
16 Southern California did she live in?

17 A. She lived in Pasadena and North Hollywood  
18 for a while.

19 Q. Okay. Over the course of three years, did  
20 she smoke?

21 A. Yes.

22 Q. Can you give the jury an idea of the  
23 frequency or regularity with which she smoked during  
24 those three years, please.

25 A. Well, it seemed like to me that, like a  
26 lot of habits in life, become more prevalent as we -- as  
27 we have them, and it seems like to me it was a gradual  
28 increase. So it seems to me it was like more than a

1975

1 half a pack at that time.

2 Q. Okay. Aside from -- I'm not trying to get  
3 you in any direction. I am not trying to push you  
4 anywhere.

5 Aside from telling the jury that it was  
6 probably more than a half a pack, can you go beyond that  
7 or just leave it at that?

8 A. I think it's safe to say that she smoked  
9 at least a half a pack.

10 Q. Okay. Now, were you a fan of smoking  
11 cigarettes?

12 A. No, sir.

13 Q. Did you in 1957, '58, '59, are those the  
14 three years you were in the Corps?

15 A. Yes. Got out in '60.

16 Q. From whenever it was in '57 that you went  
17 in until you got out in '60, can you say that during  
18 that whole period of time you didn't like smoking  
19 cigarettes?

20 A. I didn't smoke. I didn't like it.

21 Q. Had you grown up in a house where your  
22 parents smoked cigarettes?

23 A. Both parents smoked. My sister smoked.

24 Q. Did you -- during those years that you  
25 were in Southern California in the Marine Corps, did  
26 Betty Bullock know that you didn't particularly like  
27 smoking?

28 A. Well, you know, smoking was a little

1976

1 different in those days. I didn't particularly like it,  
2 but it --

3 MR. LEITER: Objection. Nonresponsive.

4 THE COURT: Remember, when objections come in,  
5 you stop.

6 Go ahead.

7 MR. LEITER: Non-responsive.

8 THE COURT: Sustained.

9 The question again: Did you during those  
10 years that you were in Southern California in the Marine  
11 Corps let Betty Bullock know that you didn't

12 particularly like smoking? The answer to that can be  
13 yes, no, or "I don't remember."  
14 THE WITNESS: It's yes.  
15 THE COURT: Go ahead.

16 BY MR. PIUZE:

17 Q. As my question progresses, and I know  
18 where they are going, would it be fair to say with the  
19 passage of time, you let her know more strongly that you  
20 didn't like smoking?

21 A. Yes, sir.

22 Q. All right. Anyway, the kinds of things  
23 that you would say to her about your dislike for  
24 smoking, would they include, "Don't smoke cigarettes  
25 because they are a health risk"?

26 MR. LEITER: Objection to the leading.

27 THE COURT: Sustained.

28 BY MR. PIUZE:

1977

1 Q. Tell the jury the subject matters -- tell  
2 the jury why you didn't like smoking.

3 A. Well --

4 THE COURT: Excuse me. Why he didn't like  
5 smoking?

6 MR. LEITER: Objection. Relevance.

7 THE COURT: It is irrelevant.

8 THE WITNESS: Okay.

9 BY MR. PIUZE:

10 Q. Tell the jury the reasons you gave to  
11 Betty Bullock for why you didn't like smoking.

12 A. I didn't like the way it looked. I didn't  
13 like the way it smelled. I didn't like the after-effect  
14 of it. I didn't like kissing an ashtray. Those kinds  
15 of things.

16 Q. Sounds like you were pretty definite about  
17 that.

18 A. Yeah.

19 Q. At any time from '57 to '60, did you ever  
20 give her any dislikes that had anything to do with  
21 health?

22 A. I don't recall focusing on health. I may  
23 have said something to the effect that it isn't good for  
24 you. It does no benefit. "It does you no good." But  
25 we didn't know much about health in those days relative  
to that issue.

27 MR. LEITER: Objection. Move to strike the last  
28 sentence.

1978

1 THE COURT: The last sentence is stricken. It  
2 is beyond the answer and it is not responsive.

3 THE WITNESS: Okay.

4 BY MR. PIUZE:

5 Q. I think ultimately we will get where we  
6 are going faster if we go in small bites.

7 A. Okay.

8 Q. And so let me jump ahead now.

9 Later, after you are out of the Marine  
10 Corps and subsequent years when you and Ms. Bullock were  
11 together, did your -- did your statements to her about  
12 your dislike for cigarettes get stronger?

13 A. I believe so.

14 Q. And as we go further in the story, did  
15 your statements to her about your dislike for cigarettes  
16 contain the same basic reasons that you have just told

17 us?

18 A. Yes.

19 Q. And subsequently, as the story will go  
20 forward, did your statements about why you dislike  
21 smoking continue not to focus on health?

22 A. Yes.

23 Q. The reason for the latter, please, the  
24 reason your statements didn't focus on health?

25 MR. LEITER: Objection. Relevance.

26 THE COURT: Sustained.

27 BY MR. PIUZE:

28 Q. Well, in 1957 or '58 or '59-60, was there

1979

1 any big deal, as far as you were concerned, about the  
2 effects of smoking on health?

3 MR. LEITER: Same objection.

4 THE COURT: Sustained.

5 BY MR. PIUZE:

6 Q. And in 1960 and '61 and '62 and '63 and  
7 1964, was there any big deal, as far as you were  
8 concerned, about the effects of smoking on health?

9 MR. LEITER: Same objection.

10 THE COURT: Sustained.

11 BY MR. PIUZE:

12 Q. So anyway, you failed to make general, you  
13 were mustered out, and where did you go?

14 A. Back to South Dakota, back to school.

15 Q. Did Betty Bullock go with you?

16 A. Yes. We were married in February of '60,  
17 and I got out in June of '60.

18 Q. When you went back to South Dakota to go  
19 to school, where did you go?

20 A. Back to Brookings, South Dakota State  
21 College.

22 Q. How many years were you and Ms. Bullock  
23 together back in -- I guess I should say how many years  
24 were you and Mrs. Bullock together back in South Dakota?

25 A. Three years.

26 Q. And were those three years in Brookings?

27 A. Yes.

28 Q. Were you a student during that entire

1980

1 period of time?

2 A. Yes.

3 Q. What did she do during that period of time?

4 A. She worked.

5 Q. What did she do, can you recall?

6 A. Yes. She worked at the college in the  
7 beginning of the computer business, a card-punch  
8 operator, and she worked sometimes in the evening at --  
9 in Brookings.

10 Q. Did she work in the evening as a waitress?

11 A. Yes.

12 Q. Did your folks own a motel?

13 A. Yes.

14 Q. Did the two of you sometimes help out at  
15 the motel?

16 A. Yes.

17 Q. Doing what?

18 A. Anything that needed to be done; making  
19 beds or washing stuff or whatever, checking people in.

20 Q. Did your mom, during this period of time,  
21 smoke?

22 A. Yes.  
23 Q. Did you sometimes criticize your mom in  
front of Betty Wulff for smoking?  
24 A. Yes.  
25 Q. Were your reasons the same general reasons  
you've already told the jury about in regard to Betty?  
26 A. Yes.

1981

1 Q. Were some of your criticisms of your mom  
2 for smoking sometimes said in front of Betty?  
3 A. Yes.  
4 Q. Do you have any recollection of Betty's  
5 reactions, if any, to your criticisms of your mom for  
6 smoking?  
7 A. I don't have any. That's a long time ago.  
8 Q. It is. When was Jodie born?  
9 A. She was born in September 1960.  
10 Q. Did Betty smoke during her pregnancy?  
11 A. Somewhat.  
12 Q. Explain that, please.  
13 A. Well, she had morning sickness that would  
14 limit her desire for cigarettes and so --  
15 Q. I'm sorry.  
16 A. -- so consequently she smoked less during  
17 that time.  
18 Q. Do you have any recollection of her  
19 quitting completely during her pregnancy?  
20 A. No.

21 THE COURT: You have to wait until he finishes  
22 his question.

23 THE WITNESS: Okay.  
24 No, I don't.

25 BY MR. PIUZE:

26 Q. Ultimately, did you and Betty get  
27 divorced?  
28 A. Yes.

1982

1 Q. When did you part, the two of you?  
2 A. It would have been October of '63.  
3 Q. At that time, October of '63, can you give  
4 the jury an indication, your best recollection, of the  
5 frequency with which she smoked cigarettes.

6 A. My best recollection would be close to a  
7 pack a day.

8 Q. Now, since 1963, give us an idea, please,  
9 about the amount of times and the circumstances under  
10 which you have been in contact with your ex-wife.

11 A. Well, I would say it was probably  
12 annually, at least, if not more frequent for the first  
13 few years and then kind of fizzled out; and I am trying  
14 to remember what year that would have been; probably the  
15 late Seventies, we really had no contact to speak of for  
16 a long time, for many years.

17 Q. Since the late 1970s up until today, how  
18 many times have you seen Betty?

19 A. Once.  
20 Q. The circumstances, please?  
21 A. There was a class reunion in 1996 back in  
22 Watertown.  
23 Q. Aside from that class reunion, I take it  
24 if you saw her, you exchanged words?  
25 A. Yeah.  
26 Q. Aside from the one time when you saw her

27 since the late Seventies, have you had any other  
28 occasion to even talk to her since the late Seventies?

1983

1 A. She called me once in '97, and that's the  
2 last time I've talked to her.

3 Q. Since the late Seventies, would it be  
4 correct, then, that you had one phone call and one  
5 meeting at a class reunion with Ms. Bullock?

6 A. Yes.

7 Q. Sometime in the last year and a half or so  
8 were you contacted by investigators for Philip Morris?

9 A. Yes.

10 Q. On the telephone?

11 A. Yes.

12 Q. And they wanted to talk to you about some  
13 issues regarding Ms. Bullock's past?

14 A. Uh-huh.

15 THE COURT: Is that a yes?

16 THE WITNESS: Yes.

17 THE COURT: Thank you.

18 BY MR. PIUZE:

19 Q. Did you give them a statement?

20 A. They interviewed me on the phone, and I  
21 responded to their questions the best I could.

22 Q. Is it your thought that that conversation  
23 was recorded?

24 MR. LEITER: Objection.

25 THE WITNESS: I don't know for sure.

26 THE COURT: Objection. That means you stop and  
27 I have a turn.

28 I'm sorry?

1984

1 MR. PIUZE: I will withdraw the question.

2 MR. LEITER: Relevance. No good-faith basis.

3 MR. PIUZE: I will withdraw the question.

4 THE COURT: Okay.

5 MR. PIUZE: Let me confer here for a second.

6 (Counsel conferred sotto voce.)

7 MR. PIUZE: I have no further questions.

8 THE COURT: Cross-examination.

9 MR. BLEAKLEY: Can we have just a moment?

10 THE COURT: Yes.

11 (A pause in the proceedings.)

12 \*

13 CROSS-EXAMINATION

14

15 BY MR. LEITER:

16 Q. Good morning, sir.

17 A. Good morning.

18 Q. I just have a few questions for you.

19 About a year ago, ten months ago, you  
20 spoke with a lawyer from my office; isn't that right?

21 A. Uh-huh. There was more than one.

22 Q. A lawyer and a paralegal, right?

23 A. Okay.

24 Q. Asked you some questions and you gave some  
25 answers?

26 A. Uh-huh.

27 Q. Yes?

28 A. Yes.

1985

1 Q. Okay. 1956 was a long time ago, right?

2 A. That's right.

3 Q. And you offered some testimony about how  
4 much Betty smoked in high school in 1956, right?  
5 A. I believe that we probably got into that.  
6 It's been a while. I don't have a real good  
7 recollection of all the questions they asked me.  
8 Q. Actually I'm talking about just a few  
9 minutes ago you were asked about that.  
10 A. Oh, yes. Yes.  
11 Q. Okay. Would it surprise you if Betty --  
12 I'm calling her Betty just so we don't get caught up in  
13 last names.  
14 A. That's all right.  
15 Q. I apologize for being too familiar.  
16 Would it surprise you if Betty's testimony  
17 about her smoking in high school was different than what  
18 you just said?  
19 A. Yeah, it would surprise me.  
20 Q. Okay. And it would surprise you if her  
21 testimony about her smoking in the late Fifties is  
22 different from what you just said?  
23 A. It's possible.  
24 Q. A long time ago?  
25 A. Yeah.  
26 Q. Okay. Now, when you were married, you  
27 were at school, right?  
28 A. Uh-huh, yes.

1986

1 Q. She was working a day job?  
2 A. Uh-huh. Yes.  
3 Q. And she was working a night job?  
4 A. Yes. Sometimes. Part of the time.  
5 Q. All right. And you didn't really see each  
6 other all that much?  
7 A. Well, pretty busy time, yes.  
8 Q. You didn't see each other all that much?  
9 A. That's right. Yes.  
10 Q. And she also has said that she didn't  
11 smoke around you; isn't that right?  
12 THE COURT: Wait, wait, wait.  
13 And she also has said that she didn't  
14 smoke around you?  
15 MR. LEITER: I am going to withdraw that  
16 question and start a different one.  
17 THE COURT: Good.  
18 BY MR. LEITER:  
19 Q. And she did not smoke around you, did she?  
20 A. Well, somewhat. She didn't -- I can't say  
21 that she didn't smoke around me. She smoked around me  
22 somewhat, sometimes. It wasn't like it was hidden.  
23 Q. It wasn't?  
24 A. No.  
25 Q. Okay. And you mentioned that you haven't  
26 seen Betty very much since the divorce in 1963; is that  
27 right?  
28 A. That's right.

1987

1 Q. Okay. And Jodie is your daughter?  
2 A. Yes.  
3 Q. Have you been in touch with Jodie over the  
4 years?  
5 A. Yes.  
6 Q. How regularly?  
7 A. Not as regular as we should. I really

8 can't tell you. I don't know. Annually or maybe it  
9 would average out to be annually.  
10 Q. When was the last time you spoke with her?  
11 A. Oh, just this morning I had breakfast with  
12 her.  
13 Q. She asked you to come testify here in this  
14 trial?  
15 A. She didn't ask me.  
16 Q. Okay. Who did?  
17 A. I was called by Paula who works for  
18 Michael; and, yes, I said I'll come down.  
19 Q. When you had breakfast with Jodie this  
20 morning, did you talk about your testimony here today?  
21 A. No.  
22 MR. LEITER: No further questions.  
23 THE COURT: Anything further on redirect?  
24 MR. PIUZE: No.  
25 THE COURT: Thank you, sir. We appreciate your  
26 coming. You are free to leave. Make sure we get the  
27 microphone and the --  
28 THE WITNESS: That would be a good idea.

1988

1 THE COURT: Yes.  
2 MR. PIUZE: Your Honor, this witness can be  
3 excused.  
4 THE COURT: You are, therefore, excused. I  
5 appreciate your being here.  
6 Call your next witness, please.  
7 MR. PIUZE: This is Merryman.  
8 THE COURT: Give me a moment.  
9 MR. BLEAKLEY: No, your Honor.  
10 THE COURT: Excuse me?  
11 MR. BLEAKLEY: We have not agreed on the  
12 portions of the Merryman testimony.  
13 THE COURT: You are talking about a reading?  
14 MR. PIUZE: Three live witnesses today. The  
15 next one is this afternoon at 1:30. I propose to read  
16 Merryman's testimony from the Minnesota trial.  
17 THE COURT: Okay. Hold on. Just give me a  
18 second.  
19 Counsel, you can approach the bench while  
20 I am trying to find this.

21 (The following proceedings were held  
22 at sidebar:)

23  
24  
25 THE COURT: This is past trial testimony  
26 regarding the organization, et cetera.  
27 What is the objection?  
28 MR. BLEAKLEY: Well, the objection, your Honor,

1989

1 is that we were led to believe that Mr. Merryman's  
2 testimony would be read.  
3 Dr. Vandermolen, who is the next live  
4 witness, I have had -- the reason it makes a difference  
5 is Mr. Piuze and I have not yet had a meet and confer  
6 about what objections will be withdrawn and what  
7 objections won't be withdrawn.  
8 At the close of business yesterday, I  
9 handed to Mr. Piuze a piece of paper with the objections  
10 that we were withdrawing and the objections that we were  
11 not withdrawing.  
12 THE COURT: Okay.

13                   MR. BLEAKLEY: During the break at 10:15,  
14 Mr. Goldstein told me that he was going to recommend to  
15 Mr. Piuze that certain of those be agreed to and that  
16 certain of them not be agreed to, and we said we would  
17 meet at lunch.

18                   THE COURT: Okay.

19                   MR. BLEAKLEY: There will be portions of that  
20 testimony to which we will continue to have an  
21 objection, and I would like to be heard, your Honor,  
22 before they are read, but we haven't even had the meet  
23 and confer yet.

24                   THE COURT: Okay.

25                   MR. PIUZE: First, your Honor --

26                   THE COURT: Yes?

27                   MR. PIUZE: -- we provided designations on what  
28 we wanted to read weeks and weeks ago, if not months

1990

1 ago. We got the objections yesterday.

2                   MR. BLEAKLEY: Not so.

3                   THE COURT: Let him finish and then you can have  
4 a turn. Go ahead.

5                   MR. PIUZE: Okay. Well, I got Mr. Bleakley's  
6 objections yesterday, probably at the close of business,  
7 and it contained one group of objections which were sort  
8 of a bargaining chip and another one which he was  
9 serious about.

10                  Mr. Goldstein has my full authority to  
11 make deals, and the meet and confer, as far as I'm  
12 concerned, has occurred; and the stuff that  
13 Mr. Goldstein gave on, he gave with my authority; and  
14 the stuff that Mr. Goldstein didn't give on, he did not  
15 give on with my authority.

16                  I presume that the court will rule on the  
17 objections as the questions came up.

18                  THE COURT: That was going to be my question.  
19 Why can't we just assume that this is a live witness?  
20 What difference does it make? You have a transcript,  
21 he has a transcript, and I am going to get a transcript.

22                  MR. PIUZE: Sure.

23                  THE COURT: And when we get to a particular  
24 place, as we did yesterday, that has not been agreed  
25 upon that's in this area that -- I mean, those that have  
26 been agreed upon to be withdrawn, I just heard Mr. Piuze  
27 say they are withdrawn; and those that have not, I have  
28 heard him say they are not withdrawn and we are going to

1991

1 go forward.

2                  You are going to make an objection. It  
3 may very well be an appropriate objection, and when you  
4 do, you will voice it and I will rule on it.

5                  MR. BLEAKLEY: Judge, I don't want to throw  
6 darts. So far we have managed not to have that, and I  
7 am not interested in doing it now. I am telling your  
8 Honor that we provided our objections to those  
9 designations weeks ago.

10                 THE COURT: I am going to assume you are right,  
11 but what difference does it make?

12                 MR. BLEAKLEY: I am going to explain that to  
13 you.

14                 THE COURT: Why?

15                 MR. BLEAKLEY: Because I have not reached an  
16 agreement with Mr. Goldstein. During the break  
17 Mr. Goldstein expressly told me that he did not have the

18 authority to make a deal.

19 THE COURT: Then let's pretend there is no  
20 objection on anything.

21 MR. BLEAKLEY: I don't have the -- even have the  
22 material here in the courtroom because I thought that at  
23 noon, we would have a meet and confer.

24 THE COURT: That's not difficult.

25 MR. PIUZE: And, excuse me, that's one other  
26 thing. I don't intend to throw darts and I -- like  
27 you -- but you misunderstood because I --

28 THE COURT: Folks, we are wasting time. I

1992

1 don't care about this little back and forth.

2 MR. PIUZE: You are right.

3 THE COURT: I want to move this trial along.

4 MR. BLEAKLEY: Judge, I don't even have --

5 THE COURT: We will give you one.

6 MR. BLEAKLEY: I have to have my notes.

7 THE COURT: Where are your notes?

8 MR. BLEAKLEY: They may have been brought over  
9 to the courtroom.

10 THE COURT: Let's find out.

11 MR. BLEAKLEY: Please let me finish here because  
12 this is important.

13 THE COURT: Okay.

14 MR. BLEAKLEY: What happened during the break is  
15 Mr. Goldstein said to me, "I am going to recommend to  
16 Mr. Piuze that he accept."

17 Now, I didn't take notes of that because  
18 the understanding that I had with Mr. Goldstein was that  
19 at the lunch break, we would sit down together and  
20 agree.

21 THE COURT: I appreciate that and I don't care.

22 MR. BLEAKLEY: Except that I need time to do  
23 it.

24 THE COURT: That is a different issue.

25 MR. BLEAKLEY: I do have one other point to make.

26 THE COURT: I want to deal with this one.

27 It seems to me that this is testimony that  
28 has come from another trial. It has been on this list

1993

1 from the day that I got it. I don't care whether you  
2 worked out some questions that are going to be withdrawn  
3 and some are not. As far as I'm concerned, they all can  
4 be asked, and I will rule on the objections as they are  
5 made, so that isn't going to worry me.

6 Now, what does bother me, and I will give  
7 latitude, is if you say to me "but my notes are not  
8 here." If they are not here, we will deal with it a  
9 little differently. If they are here, let's get them  
10 and let's get started.

11 MR. BLEAKLEY: I am still going to need a few  
12 minutes, Judge.

13 THE COURT: Of course you will need a few  
14 minutes. I will give you a few minutes.

15 MR. BLEAKLEY: May I make one other point?

16 THE COURT: Yes, you may.

17 MR. BLEAKLEY: Two other points, actually.

18 The first other point is that the  
19 objection -- I know what Mr. Piuze's answer is going to  
20 be to my objection to some of this testimony; and it is  
21 going to be that it wasn't objected to during the  
22 Minnesota trial; therefore, it's waived.

23 THE COURT: Okay.  
24 MR. BLEAKLEY: I want to make an argument to the  
25 court in response to that, and I can't do it on the  
26 record in front of the jury.  
27 THE COURT: You don't have to. We will do it  
28 afterwards on the record. You will make your record. I

1994

1 am going to tell you now that if the -- if it was at the  
2 trial, if it was a trial wherein there was a lawyer for  
3 Philip Morris and the lawyer didn't make an objection, I  
4 am going to take the position that I took before, and  
5 that is that comes in.

6 Now, if you want to, as Mr. Piuze did  
7 quite properly, go to the -- after we have this in and  
8 we have now got it on the record, that you want to do it  
9 before the questioning, and I am not going to let you do  
10 that to waste the time. You can make any kind of record  
11 you want, and it will go with this case to whatever  
12 appellate court wants to hear it.

13 MR. BLEAKLEY: But, Judge, the reason I want to  
14 make the argument to you before is because there's a  
15 possibility that I might convince you.

16 THE COURT: Okay. There is certainly that  
17 possibility, and it isn't going to happen. I have made  
18 a ruling on that issue, and I'm not going to change it  
19 in the middle of the trial.

20 MR. BLEAKLEY: Can I make the argument now then?

21 THE COURT: Sure.

22 MR. BLEAKLEY: Okay. I was the lawyer at that  
23 trial. I was the lawyer who was with Mr. Merryman. I  
24 was the lawyer who defended him during his testimony. I  
25 was the lawyer whose responsibility it was to make  
26 objections or not make objections.

27 Now, what happened during that trial is  
28 that no objections were sustained to anything no matter

1995

1 how far afield the roaming went, no objections were  
2 sustained; and as the trial lawyer, the lead trial  
3 lawyer in that case, I had to make the judgment that all  
4 of us who try cases make from time to time, which is  
5 that you simply cannot object over and over and over  
6 again.

7 Now, I understand you can take the  
8 position that that's waiver, but let me give you an  
9 example of the kind of thing that was being done during  
10 that trial and which I finally had to make a tactical  
11 decision that I am not going to keep objecting and have  
12 the jury think I am an obstructionist.

13 The questions about how you feel and what  
14 you feel is the corporation's responsibility and do you  
15 think they have a duty for a man who wasn't even in the  
16 tobacco industry at the time, if the rule, the automatic  
17 and unwaivering rule is that the objection is not made  
18 at the time, it is waived forever, it means essentially  
19 we have the lowest common denominator no matter how  
20 outrageously a trial is being handled.

21 If the objection wasn't made, it is  
22 forever waived and you're stuck with it. I don't think  
23 that's fair, and I think there should be exceptions to  
24 the waiver rule.

25 THE COURT: Mr. Leiter found an exception to  
26 that rule by saying may we have a running objection on  
27 this particular issue throughout the trial, and then he

28 made his record and he didn't have to keep repeating it

1996

1 again and again.

2 MR. BLEAKLEY: We were not allowed.

3 THE COURT: Well, you show me that --

4 MR. BLEAKLEY: I was not allowed by that judge  
5 to have continuing objections.

6 THE COURT: Well, again, I need to see that, if  
7 you have transcript where that was said. See, here is  
8 the problem. I can't go back -- put myself back in  
9 time. Now, it is true that if you fail to make an  
10 objection, the question is going to be allowed to be  
11 asked; however -- and I said this before -- if the  
12 answer is not responsive to the question and, for  
13 example, the question is, is there a reason -- no. Let  
14 me -- was there a corporate policy against having  
15 filtered cigarettes and the witness answers the  
16 president of the corporation was a representative of the  
17 American Nazi Party and part of our process was to kill  
18 off the American people, that answer, I don't care what  
19 the objection is, is so non-responsive and so  
20 prejudicial I would entertain an objection on it.

21 But if you are saying to me that there are  
22 a series of legitimate questions that are being asked  
23 that you came up with a tactical decision --

24 MR. BLEAKLEY: That is not my position. My  
25 position is that the questions were not legitimate.  
26 They never should have been allowed. They were  
27 argumentative. They were making closing argument over  
28 and over and over again; and when I objected, my

1997

1 objections were overruled.

2 When I asked for standing objections, I  
3 was told, "There will be no such standing objections.  
4 If you want to, you will do it on the record." And I  
5 ultimately made the decision that I could not appear  
6 before this court, that jury, to be an obstructionist.

7 THE COURT: Okay. But you put Mr. Piuze and the  
8 court in an impossible position of having to say, well,  
9 if he was able to -- if he chose to make an objection  
10 and it was on the record, then we could deal with it.

11 MR. BLEAKLEY: Judge, if you saw these questions  
12 and answers, you would know what I am talking about; and  
13 you are not going to see them now. You are going to see  
14 them when they are read in this courtroom.

15 THE COURT: Mr. Piuze, do you want to be heard?  
16 I can't see --

17 MR. BLEAKLEY: I am going to put my objections  
18 on the record.

19 THE COURT: Of course, you can. They are on the  
20 record, and that is what we are doing and you can.

21 MR. BLEAKLEY: I want them on the record at this  
22 time.

23 THE COURT: Absolutely.

24 MR. BLEAKLEY: And I want to put grounds on the  
25 record.

26 THE COURT: We will see how far you can go.

27 MR. BLEAKLEY: I can argue. I will say  
28 "argumentative."

1998

1 THE COURT: Of course you can say that.

2 MR. BLEAKLEY: The second -- this is a minor  
3 point, but one I think is important; and that is, I

4 don't think there is any reason in the world why this  
5 jury needs to know that Mr. Bleakley was the lawyer in  
6 that trial.

7 THE COURT: I don't either.

8 MR. BLEAKLEY: And so I don't think that either  
9 Mr. Goldstein or Mr. Piuze -- and I am not suggesting he  
10 was going to, because we have already had this  
11 discussion and he basically agreed not to do it.

12 MR. PIUZE: I don't recall that discussion.

13 THE COURT: It's not relevant.

14 MR. PIUZE: It isn't. It's my suggestion that  
15 every time it says on the transcript "Mr. Bleakley," we  
16 insert the name "Leiter" instead.

17 MR. BLEAKLEY: He is being funny now.

18 THE COURT: I understand that, and we are  
19 wasting valuable time.

20 MR. PIUZE: We are.

21 MR. BLEAKLEY: This is important.

22 THE COURT: Well, it is -- I am not saying it is  
23 not important. You have made your record as to why you  
24 chose not to do the objections at the trial. If I  
25 understand correctly, what we are going to hear -- stop  
26 me if I'm wrong -- are questions to which there was no  
27 objection, correct?

28 MR. BLEAKLEY: There are somewhere. They were

1999

1 overruled.

2 THE COURT: No, no. If they are overruled, I am  
3 more than happy to revisit that and make my own ruling.  
4 If there was an objection, I will make a ruling on it.

5 MR. BLEAKLEY: I hear you.

6 THE COURT: If there was no objection, I am  
7 going to have to assume that, as a tactical matter,  
8 Counsel chose not to do it. You have given on the  
9 record your tactics for doing it, and they may be  
10 exactly right or they may be the product of hindsight as  
11 to why you didn't do it.

12 MR. BLEAKLEY: Or even incompetence.

13 THE COURT: It could be. It could be any number  
14 of things, including seeking a reversal on appeal on the  
15 ground that improper material came in. I don't know. I  
16 wasn't there.

17 MR. BLEAKLEY: I hear you.

18 THE COURT: Okay. Let's go.

19 MR. BLEAKLEY: But I still need -- we don't have  
20 an agreement, although I suspect we will -- I need a few  
21 minutes.

22 THE COURT: I don't care about an agreement.

23 MR. BLEAKLEY: I do, because if we have one, I'd  
24 like to memorialize it. Mr. Piuze says that  
25 Mr. Goldstein has authority. I need to go back and look  
26 at that.

27 THE COURT: Here is the answer.

28 MR. BLEAKLEY: It will take me about ten minutes.

2000

1 THE COURT: No, it isn't. Here is the answer to  
2 that: If Mr. Piuze has an agreement not to ask a  
3 question, you will know about it because he won't ask  
4 the question. As he has done consistently throughout  
5 the trial, where there has been an agreement, he puts  
6 his witness on the stand and the witness says, "No, we  
7 are not going to cover that." So then you will know.  
8 If there is no agreement, then he will ask

9 the witness, and then you can do with it what you want.  
10 You can make your objection or do whatever you want to  
11 do.

12 MR. BLEAKLEY: May I have a few minutes?

13 THE COURT: Well, it's now -- if you have a few  
14 minutes, we might as well go through the noon hour.

15 MR. BLEAKLEY: I don't even have my materials  
16 yet.

17 THE COURT: That is a different issue. If you  
18 don't have your materials, without question you will get  
19 time.

20 MR. BLEAKLEY: And I need a few minutes.

21 THE COURT: How much is a few minutes?

22 MR. BLEAKLEY: If they are here, I need about  
23 five minutes.

24 THE COURT: All right. Let's find out if they  
25 are here. Let's do that first. Just everybody stay  
26 right here. I don't want to have people roaming  
27 around.

28 (A pause in the proceedings.)

2001

1  
2 (The following proceedings were held  
3 in open court within the presence of  
4 the jury:)

5  
6 MR. BLEAKLEY: I'm sorry, your Honor. I just  
7 need a couple more minutes.

8 THE COURT: Go ahead.

9 (A pause in the proceedings.)

10  
11 (The following proceedings were held  
12 at sidebar:)

13  
14 MR. LEITER: Can I make a suggestion that I am  
15 just making up as I am standing here?

16 THE COURT: That's what lawyers do.

17 MR. LEITER: Sometimes better than others.

18 Is it my understanding, Mr. Piuze, that  
19 you are going to put Mr. Vandermolen on the stand right  
20 after lunch?

21 MR. PIUZE: 1:30.

22 MR. LEITER: This is, I assume, going to take  
23 more than a half hour?

24 MR. PIUZE: It is.

25 MR. LEITER: What if we broke from 11:30 to 1:00  
26 instead of 12:00 to 1:30, put Vandermolen on the stand  
27 after lunch for however long it takes, give Mr. Bleakley  
28 time to look through the material, and then do this

2002

1 after?

2 THE COURT: What do you say?

3 MR. PIUZE: Vandermolen will be here at 1:30,  
4 not 1:00.

5 THE COURT: Okay.

6 MR. PIUZE: Beyond that, I am neutral. Anything  
7 you want to do.

8 MR. LEITER: I tried.

9 THE COURT: That's fine.

10 (A pause in the proceedings.)

11  
12 (The following proceedings were held  
13 in open court within the presence of

14                   the jury:)

15  
16                   THE COURT: Let me tell you what we have been  
17 doing and give our apologies.

18                   The next live witness will be here at  
19 1:30. We have, however, testimony to be read from a  
20 prior trial. In most cases, the testimony that has  
21 been -- that is coming to us from a prior trial has been  
22 discussed between the two sides, and you may have heard  
23 during the role-playing that we did to get that previous  
24 witness before you where one lawyer or -- where the  
25 person who was the witness was saying, "No, no, we are  
26 going to skip that part."

27                   Well, we haven't got to that on this  
28 witness, and so you are going to hear some

2003

1                   interruptions. I am going to have to look at it, and I  
2 am going to have to make a ruling; but let's get through  
3 as much as we can until noon, and then we will see where  
4 we are.

5                   So call your witness and tell me -- who is  
6 the next witness so the jury will know who the person  
7 is?

8                   MR. PIUZE: Walker Merryman.

9                   THE COURT: Would you spell that for us.

10                  MR. PIUZE: M-e-r-r-y-m-a-n.

11                  THE COURT: All right. And will you give us the  
12 designation or title, if you will, of Mr. Merryman.

13                  MR. PIUZE: Vice-president of The Tobacco  
14 Institute.

15                  THE COURT: Okay. Hold on. VP of The Tobacco  
16 Institute.

17                  And you have for me this -- okay. Thank  
18 you. And this testimony is testimony from a previous  
19 trial conducted in Minnesota; and can you tell me when  
20 that was?

21                  MR. PIUZE: Yes. This testimony starts on  
22 February 6, 1998.

23                  THE COURT: In Minnesota. All right. And  
24 Mr. Merryman's surrogate will come up and have a seat,  
25 pinning the microphone on himself.

26                  MR. PIUZE: Mr. Merryman's surrogate is again  
27 Mr. Goldstein.

28                  THE COURT: Everybody wants him to read it.

2004

1                   (Laughter.)

2                  THE COURT: And who are you -- well, forget it.  
3 You are going to begin as the lawyer for the plaintiff,  
4 or you are going to begin as the lawyer for the tobacco  
5 industry?

6                  MR. GOLDSTEIN: Plaintiff.

7                  MR. PIUZE: This witness was called by  
8 Mr. Ciresi, C --

9                  THE COURT: I don't care about his name. That's  
10 the plaintiff's lawyer, correct?

11                  MR. PIUZE: It is.

12                  THE COURT: All right. That's fine. You may  
13 begin. Just give us the page and the line where you are  
14 going to start.

15                  MR. PIUZE: 2692 is the page.

16                  THE COURT: Okay.

17                  MR. PIUZE: I bet you are all looking forward to  
18 this.



24           A. I believe Mr. Kornegay became president of  
25 the Institute in 1971.

26           Q. How long did he remain as president after  
27 you started with The Tobacco Institute in 1976?

28           A. Mr. Kornegay retired in the mid-1980s. I

2007

1 don't recall the date.

2           Q. And his successor was whom, sir?

3           A. Samuel Chilcote.

4           Q. And how long did Mr. Chilcote hold the  
5 position as president of The Tobacco Institute?

6           A. Mr. Chilcote remains in that position  
7 today.

8           Q. Have you served as an assistant to him in  
9 addition to your job as vice-president, director of  
10 communications?

11          A. No. My position is vice-president and  
12 director of communications.

13          Q. Can you describe for the ladies and  
14 gentlemen of the jury and the court your general duties  
15 as vice-president, director of communications for The  
16 Tobacco Institute?

17          A. Generally speaking, I'm responsible to --  
18 for responding to inquiries from the news media. If we  
19 get a call from a reporter, it's my job to try to  
20 respond to that reporter if I can, if I have the  
21 information, and if it's something that we can respond  
22 to.

23          Q. Do you respond to issues regarding smoking  
24 and health?

25          A. On occasion. If the reporter asks, we do,  
26 yes, sir.

27          Q. And do you specifically respond to  
28 inquiries?

2008

1           A. Certainly not all of them. We might not  
2 have the information. But on occasion we have, yes,  
3 sir.

4           Q. And I'm asking now just about you. Let's  
5 put The Tobacco Institute aside for a minute,  
6 Mr. Merryman.

7           Have you yourself responded to specific  
8 inquiries regarding smoking and health, inquiries  
9 directed to The Tobacco Institute by the media?

10          A. I myself have responded to questions from  
11 reporters about smoking-and-health issues, yes, sir.

12          Q. And would it be fair to state that from  
13 the time you started in 1971, right up to today, you  
14 have never admitted, as the spokesman for The Tobacco  
15 Institute, that smoking causes lung cancer?

16          A. I began with the Institute in 1976, rather  
17 than '71 as you stated.

18          Q. Excuse me, 1976.

19          A. It's quite true that the position of the  
20 Institute, that I have articulated is that we don't  
21 believe it's before been established that smoking is a  
22 cause of disease.

23          Q. So that it would be fair to state that,  
24 not only with regard to lung cancer, with regard to any  
25 disease, you on behalf of The Tobacco Institute have  
26 never stated that smoking causes any disease; is that  
27 correct?

28          A. I have never stated that we believe it's

2009

1 been proven that smoking causes disease, yes, sir.  
2 Q. Now, during the course of your career from  
3 1976 up to the present time in working for The Tobacco  
4 Institute, have you had an understanding with regard to  
5 who funds The Tobacco Institute?

6 A. Yes, sir, it's very clear who funds the  
7 Institute. The member companies, the companies that  
8 manufacture tobacco products.

9 Q. Okay. So Philip Morris funds it?

10 A. Philip Morris is one of our members, yes,  
11 sir.

12 Q. RJR funds The Tobacco Institute?

13 A. R.J. Reynolds, yes sir, they are a member  
14 as well.

15 Q. Brown & Williamson?

16 A. Yes, sir.

17 Q. American?

18 A. No, sir, American is not a separate  
19 company.

20 Q. Was American a member of the institute  
21 before it was purchased by Brown & Williamson?

22 A. From time to time it was, yes, sir.

23 Q. Lorillard --

24 A. Yes.

25 Q. -- funds the Institute?

26 A. Yes, sir. Lorillard is one of our  
27 members.

28 Q. And Liggett was a membership -- a member,

2010

1 excuse me, of the Institute?

2 A. They have been in the past. They are not  
3 presently.

4 MR. GOLDSTEIN: The next designation is on page  
5 2704 on line 6.

6 (Reading of the testimony of Walker Merryman resumed.)

7 Q. Now, have you ever asked any of the member  
8 companies that you work for whether or not they consider  
9 smoking to be addictive?

10 A. Well, the guidance we received from our  
11 member companies certainly would indicate that they  
12 don't believe that with respect to using the word  
13 "addiction" and smoking, that that's proper. I don't  
14 think it's proper. I know a lot of people do, but I  
15 don't think it's proper to say that smoking a cigarette  
16 is the same thing as using heroin or crack.

17 Q. The Surgeon General said that in 1988;  
18 correct?

19 A. He equated -- as I recall, the Surgeon  
20 General equated smoking a cigarette with using heroin  
21 and crack.

22 Q. Thank you.

23 Now my question to you is this: Have you  
24 asked any of the scientists at any of the member  
25 companies of The Tobacco Institute whether they consider  
26 smoking addictive?

27 A. No, sir. I don't have regular contact,  
28 really any contact to speak of with scientists at the

2011

1 company. My contact would come at another level.

2 Q. Your contact comes through the lawyers;  
3 correct?

4 A. No, my contact comes from people in the

5 public relations area of the companies.  
6 Q. Are the people in the public relations  
7 areas of the companies learned in the medical sciences?  
8 A. Well, I would ask them for information,  
9 which they would get from other people at the  
10 companies. I'm sure that that's the way it would work,  
11 sir.  
12 Q. Well, you're the one that does it, not  
13 me. So you say you're sure that's the way it would  
14 work.  
15 Let me ask my question again. Okay?  
16 Do you know if any of the PR people you talk with are  
17 learned in the medical sciences? "Yes" or "no."  
18 A. I guess it depends on what you mean by  
19 "learned in the medical sciences."  
20 Q. Are they Ph.D.s?  
21 A. I don't know.  
22 Q. Are they medical doctors?  
23 A. I don't know of anyone in the public  
24 relations field who's a medical doctor, no, sir.  
25 Q. Are they psychologists or  
26 psychiatrists?  
27 A. I don't know.  
28 Q. So you wouldn't know if they were learned

2012

1 in the medical sciences; is that right?  
2 A. If that's what you mean by "learned in the  
3 medical sciences," then I would not, no, sir.  
4 Q. So as I understand it, PR people from the  
5 companies give you information; is that right?  
6 A. I would ask my colleagues at my member  
7 companies for information on subjects, and they would  
8 report back to me on what they found.  
9 Q. Did you ask them who they got the  
10 information from?  
11 A. I cannot sit here and tell you I can think  
12 of a specific instance where that occurred, no, sir.  
13 Q. Did you ask them for any written materials  
14 analyzing issues of smoking and health?  
15 A. We have received material on smoking and  
16 health over the years. Not recently. It's been an  
17 awfully long time since we've received anything on the  
18 smoking-and-health issue. And we certainly have issued  
19 materials from The Tobacco Institute that is responsive  
20 to smoking-and-health questions, but as I said, it's  
21 been an awfully long time since we've gotten into that.  
22 Q. You are still responding to  
23 smoking-and-health inquiries; are you not, sir?  
24 A. We do when they come up, but very, very  
25 infrequently are we asked about that subject now, sir.  
26 Q. And even today when you're asked about it,  
27 you state that smoking doesn't cause any diseases;  
28 correct?

2013

1 A. No, sir. We say that we don't believe  
2 it's been established or proven that smoking causes  
3 disease. We know that smoking is statistically  
4 associated with disease, but we know that -- we also  
5 believe that it's not been established that something  
6 causes disease. And we believe we have support for  
7 that, that view, in the scientific literature.  
8 Q. You say that --  
9 You say there's a statistical association;

10 is that right?  
11 A. Yes, sir.  
12 Q. Now, do you know or have you spoken to  
13 anyone in the medical field as to when a statistical  
14 association becomes cause and effect?  
15 A. Well, I think there are some things that  
16 people in medicine and science have suggested they would  
17 like to see before they can judge a cause-and-effect  
18 relationship exists. For example, they would like to  
19 know the basic mechanism for the causation of the  
20 disease; in the case of cancer, why a previously healthy  
21 cell sometimes becomes malignant.

22 Q. What else would they like to see, sir? A  
23 mechanism. What else?

24 A. Well, I think that's the -- one of the  
25 demonstrations. Perhaps one of the basic questions that  
26 scientists have had over the years about whether smoking  
27 causes disease; that is, no one's ever been able to  
28 describe the mechanism.

2014

1 Q. Sir, what else do doctors look to do --  
2 excuse me.

3 Sir, what else do doctors look to to  
4 determine cause and association from statistical -- or  
5 cause and effect from statistical association?

6 If you know. If you don't, just tell me  
7 you don't know.

8 A. My only experience is with smoking and  
9 health, and beyond that I wouldn't know, sir.

10 Q. Do you know if they look at the  
11 consistency of the association?

12 A. I know that that's one thing that some  
13 people have noted as they believe in their judgment's  
14 important.

15 Q. Do you know if they look to the strength  
16 of that association?

17 A. Again, I believe that's one thing that  
18 some people who have studied this look at and believe is  
19 important.

20 Q. Do you know if they look to the  
21 specificity -- specificity of the association?

22 A. That I believe is also something that they  
23 look to and might believe important.

24 Q. Do you know if they look to the temporal  
25 relationship of the association?

26 A. I believe so, yes, sir.

27 Q. Do you know if they look at the coherence  
28 of the association?

2015

1 A. I believe so, yes, sir.

2 Q. And what do you understand the coherence  
3 of the association to be, sir?

4 A. I don't know that I understand that  
5 scientific term very well, sir.

6 Q. Do you understand what the temporal  
7 relationship of the association is?

8 A. I have heard that phrase, but I've never  
9 heard it described.

10 Q. So you don't know what it is; do you?

11 A. I've not heard it described.

12 Q. Do you know what the specificity of the  
13 association is?

14 A. Again, that's a scientific term that I'm

15 not familiar with. I've heard it described, but I've --  
16 I've heard it said. I have not heard it described.  
17 Q. Do you know what "the strength of the  
18 association" means?

19 A. No, sir.

20 Q. Do you know what "the consistency of the  
21 association" means?

22 A. No, sir.

23 Q. So you really don't know any of the  
24 criteria that the medical world uses in defining cause  
25 and effect; do you, sir?

26 A. I don't know if what you've described  
27 could fairly be said to be the medical world's view of  
28 how statistics can be translated into a cause-and-effect

2016

1 relationship.

2 MR. GOLDSTEIN: The next will be at page 2712 at  
3 line 18, please.

4 THE COURT: Thank you.

5 (Reading of the testimony of Walker Merryman resumed.)

6 Q. Okay. You do feel, do you not, that  
7 people have the right to the whole truth about smoking?

8 MR. LEITER: Objection.

9 MR. BLEAKLEY: Objection, your Honor.

10 THE COURT: Hold on.

11 (A pause in the proceedings.)

12 THE COURT: Objection is overruled. You may  
13 answer.

14 (Reading of the testimony of Walker Merryman resumed.)

15 A. Certainly.

16 Q. In fact, you believe it's important for  
17 the American people to have the right to the whole truth  
18 about smoking; don't you?

19 MR. BLEAKLEY: Objection. May I have a  
20 continuing objection to this line of questioning on this  
21 and the next two pages?

22 THE COURT: Yes, you may, and the same ruling  
23 will flow.

24 Go ahead.

25 (Reading of the testimony of Walker Merryman resumed.)

26 A. I believe that people ought to have as  
27 much information as they can get, yes, sir.

28 Q. Well, my question was a little different.

2017

1 You believe it's important for the  
2 American people to have the right to the whole truth  
3 about smoking; correct?

4 A. Yes, sir.

5 Q. Now, would you agree, sir, that a  
6 manufacturer who is making a product has more  
7 information about that product than anyone else in the  
8 world?

9 A. As a general proposition, I imagine that's  
10 probably true.

11 Q. And you would agree that manufacturers,  
12 and specifically the tobacco industry, has a duty to the  
13 American people to research its product; wouldn't you?

14 A. I'm sorry, sir, did you say the Institute  
15 or the industry?

16 Q. The industry.

17 A. The industry has a duty to research its  
18 product?

19 Q. Yes.

20           A. Yes, sir.  
21           Q. To find out what its risks are; correct?  
22           A. If you're asking me a legal question, I --  
23 I don't know, I'm not a lawyer.  
24           Q. That's not what I asked you.  
25           Do you feel the companies have a duty to  
26 find out what the risks of their products are?  
27           A. I personally?  
28           Q. Yes.

2018

1           A. Yes, sure. I think that's -- that's  
2 something that any company would probably be interested  
3 in.

4           Q. And would you agree, sir, in your position  
5 as vice-president of communications, that the cigarette  
6 companies have a duty to research the risks of their  
7 product?

8           A. No, I don't know that I know what their  
9 duty is. But I think that the risks of -- of smoking  
10 are pretty well understood by people.

11          MR. GOLDSTEIN: At page 2714, at line 25, the  
12 last two words.

13          THE COURT: Wait. 2714?

14          MR. GOLDSTEIN: Yes. At the bottom of this  
15 page, your Honor, the last two words.

16          THE COURT: Wait.

17          (A pause in the proceedings.)

18          THE COURT: 2714?

19          MR. GOLDSTEIN: Yes.

20          THE COURT: To what line?

21          MR. GOLDSTEIN: Line 25, and there are two words  
22 that begin a sentence.

23          THE COURT: Okay. That's a question. Go  
24 ahead.

25          MR. PIUZE: I flunked. Just say it one more  
26 time so I don't mess it up, please.

27          THE COURT: Line 25, the last two words  
28 beginning with "I'm just."

2019

1           MR. PIUZE: Okay. Thank you.

2 (Reading of the testimony of Walker Merryman resumed.)

3           Q. I'm just wondering whether you feel that  
4 manufacturers, specifically the cigarette industry, has  
5 a duty to look into research to find out what the risks  
6 of its products are. It's a simple question.

7           A. I think that if a company becomes aware  
8 that there's something about its product that  
9 possibly -- that's possibly risky, then they've got --  
10 then they should look at it and -- and then research,  
11 certainly.

12          Q. And they should tell the consumers about  
13 it, right?

14          A. Oh, if there's something consumers don't  
15 know, there's some breakthrough or something about the  
16 product the consumers aren't aware of, I think it's  
17 probably a good idea for the company to let people know  
18 about it.

19          Q. How would you know whether all the  
20 consumers knew or didn't know unless you told them?

21          A. I don't think it's possible for any  
22 company to know what all consumers know, but I think  
23 it's certainly possible for companies to have a good  
24 understanding of what it's customers know and understand

25 and believe about its product.

26 Q. But you would agree it's reasonable that a  
27 company should do whatever they can do to get  
28 information out so the consumers do know what the

2020

1 company knows about its product; correct?

2 A. Well, as a general proposition, I think  
3 most companies would be interested in having consumers  
4 know about their products, yes, sir.

5 Q. Specifically about health risks, sir, or  
6 whether they think it causes something, should the  
7 cigarette companies, through you, The Tobacco Institute,  
8 tell the American people what they know?

9 A. I think if they become convinced of  
10 something, then they would certainly let us know what  
11 their position was, and we could then tell the public on  
12 behalf of the industry what that particular perspective  
13 was.

14 Q. So if they became convinced. And what  
15 type of convincing would be necessary, in your judgment,  
16 before the cigarette industry should tell the public  
17 what the risks of the product are?

18 A. I don't think that's a question I could  
19 answer. I just don't know, sir.

20 Q. Have you ever asked that question?

21 A. No, sir.

22 Q. In your communications you have -- and I  
23 don't mean this in an impertinent way, but you have  
24 literally flooded the media with statements on behalf of  
25 the industry; have you not?

26 A. Well, I think I certainly would quarrel  
27 with your use of the word "flooded." We have made the  
28 news media aware of the fact that we exist as an

2021

1 information resource. Then, of course, it's up to the  
2 news media to decide whether or not they even want to  
3 call us to get our perspective, and then make a decision  
4 on how much of the information we give them they think  
5 is useful that they can disseminate.

6 Q. Well, you've appeared on Ted Koppel.

7 A. Yes, sir.

8 Q. You've appeared on McNeil-Lehrer?

9 A. Yes, sir.

10 Q. You've appeared on the NBC Nightly News?

11 A. I believe I have, yes, sir.

12 Q. You've appeared on the CBS Evening News?

13 A. Yes.

14 Q. You've appeared on the ABC Evening News?

15 A. I have.

16 Q. You've appeared on CNN Evening News?

17 A. Yes, I've appeared on CNN.

18 Q. You've appeared on Good Morning America?

19 A. I can't recall if I personally have, sir.

20 Q. The Tobacco Institute has.

21 A. Someone from the Institute has, yes.

22 Q. You've appeared on CBS morning shows?

23 A. Yes.

24 Q. You've appeared on the Public Broadcasting  
25 Corporation?

26 A. Yes, sir.

27 Q. You've appeared on radio and TV in every  
28 state in the union; haven't you, sir?

2022

1           A. That's correct.  
2           Q. You have appeared here in Minnesota;  
3 haven't you?  
4           A. Yes, sir.  
5           MR. PIUZE: Now we are at 2719, line 2.  
6           THE COURT: Give me a moment.  
7           (A pause in the proceedings.)  
8           THE COURT: Go ahead.  
9           (Reading of the testimony of Walker Merryman resumed.)  
10          Q. And on all those shows that you have been  
11 on you have conveyed the industry's message with regard  
12 to smoking and health, haven't you?  
13          A. No, sir, I wouldn't say that -- I wouldn't  
14 say that's at all true, because in many cases the  
15 reporter isn't interested in smoking and health; and  
16 part of the reason we are there is to try to respond to  
17 their questions, and their questions come from what they  
18 understand to be the community's concern about a  
19 particular issue. I can't direct that.

20          Q. Well, are you saying that when you've  
21 appeared on all these shows, the questions did not  
22 involve smoking and health?

23          A. Well, I believe your question said  
24 something like all of my appearances involved smoking  
25 and health. My only -- my only intent was to try to let  
26 you and the jury know that that's not necessarily the  
27 case, sir.

28           We do respond to questions as they are

2023

1          asked of us, but in not all of those occasions were  
2 smoking-and-health issues raised.

3          Q. You've appeared, sir, in all of those  
4 programs at one time or another and have discussed,  
5 among other things, the issue of smoking and health;  
6 have you not?

7          A. We have discussed the issue of smoking and  
8 health. I cannot sit here and tell you that in every  
9 single one of those appearances you mentioned smoking  
10 and health came up as an issue. I don't know that.

11          Q. And you've sent letters to the editor on  
12 the issue of smoking and health?

13          A. Yes, sir.

14          Q. You have a newsletter that goes out?

15          A. We do not, no, sir.

16          Q. You did have a newsletter?

17          A. We did at one time have a newsletter. It  
18 was privately circulated.

19          Q. And that dealt with smoking and health,  
20 among other issues?

21          A. Smoking and health was one of the issues  
22 that occasionally was dealt with within the newsletter,  
23 yes, sir.

24          MR. PIUZE: Okay. We are at 2721, line 2.

25          THE COURT: Okay. This is probably a good place  
26 to take the break since we are moving to another page.  
27 I want to not only admonish the jury but also give you  
28 another preview.

2024

1           Again, you are not to discuss this case  
2 amongst yourselves or with anyone else. Do not form or  
3 express any opinion on the matter until it's finally  
4 submitted to you.

5           In all likelihood, when we come back at

6 1:30, we are going to interrupt this reading. We will  
7 have a live witness. We will put that live witness on  
8 and then we will come back to this.

9 Have a pleasant lunch. We will see you  
10 when you get back.

11  
12 (The following proceedings were held  
13 in open court outside the presence  
14 of the jury:)

15  
16 THE COURT: Okay. I think the jurors have now  
17 left. Any other issues that we need to take up in the  
18 presence of the reporter?

19 MR. PIUZE: No, sir.

20 THE COURT: Okay.

21  
22 (The noon recess was taken until  
23 1:30 p.m. of the same day.)

24  
25  
26  
27  
28

2025

1 Los Angeles, California August 28, 2002  
2 Case Number: BC249171  
3 Case Name: Bullock vs. Philip Morris  
4 Department 19 Hon. Warren L. Ettinger, Judge  
5 Reporter: Ruanne McArthur, CRR, CSR #2699  
6 Time: 1:30 p.m. Session  
7 Appearances: (As heretofore noted.)  
8 -oOo-

9 (The following proceedings were held  
10 in open court within the presence of  
11 the jury:)

12  
13 THE COURT: Counsel, could you come up here for  
14 a moment.

15  
16 (A discussion was held at the bench,  
17 not reported.)

18  
19 (The following proceedings were held  
20 in open court within the presence of  
21 the jury:)

22  
23 MR. PIUZE: Dr. Louis Vandermolen is  
24 plaintiff's next witness.

25 THE COURT: Doctor, would you step around the  
26 side of the witness stand, and would you stop there, and  
27 raise you right hand.

28 Do you solemnly state that the testimony

2026

1 you may give in the cause now pending before this court  
2 will be the truth, the whole truth, and nothing but the  
3 truth so help you God?

4 THE WITNESS: Yes.

5 THE COURT: Would you be seated, sir, and in a  
6 loud, clear voice -- first, we are going to slip that  
7 microphone on you.

8 Okay. In a loud, clear voice would you  
9 state your full name and spell for us both your first  
10 and last name.

11           THE WITNESS: Louis Vandermolen, L-o-u-i-s,  
12 V-a-n-d-e-r-m-o-l-e-n.  
13           THE COURT: This is Dr. Vandermolen?  
14           THE WITNESS: Correct.  
15           THE COURT: Doctor, as I explain shamefully to  
16 all of the witnesses, the acoustics are not very good  
17 here, so it's really important that you keep your voice  
18 up. Project and speak loudly.  
19           Listen to the question that the lawyer  
20 asks -- and this is the toughest thing you are going to  
21 have to do. Make sure you understand the question  
22 before you answer and then answer only what he asks for.  
23 If it's a yes or no, just give him a yes or no. He will  
24 follow it up by taking you where he wants the evidence  
25 to go.  
26           Make sure that you are not talking when he  
27 is talking, because the court reporter has to take notes  
28 and she can't get two voices.

2027

1           When you hear attorneys on the other side  
2 say "objection," stop wherever you are. Don't finish  
3 the sentence. Just stop dead in your tracks; and then I  
4 will hear what the objection is and make a ruling.  
5 Okay?

6           THE WITNESS: Yes.  
7           THE COURT: Thank you.

8  
9 \*           LOUIS VANDERMOLEN, M.D.,  
10 Called by the plaintiff as a witness, was sworn and  
11 testified as follows:

12  
13           THE COURT: Mr. Piuze, you may begin.

14  
15 \*           DIRECT EXAMINATION

16  
17 BY MR. PIUZE:

18           Q. Good afternoon.  
19           A. Good afternoon.  
20           Q. Tell us your occupation, please.  
21           A. Medical oncologist or cancer specialist.  
22           Q. Tell us your educational background that  
23 allows you to be a cancer specialist, please.  
24           A. Undergraduate education, University of  
25 California, Riverside, Bachelor's degree in arts;  
26 medical degree from Loyola University in Chicago;  
27 internship residency at Baylor College of Medicine at  
28 Houston, Texas; and fellowship in hematology and blood

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1 diseases at Baylor in Houston, Texas; and fellowship in  
2 medical oncology at the National Cancer Institute in  
3 Bethesda, Maryland.

4           Q. Thank you. Are you a board-certified  
5 cancer specialist?

6           A. Yes.

7           Q. For how long?

8           A. Board certified in 1989.

9           Q. What's Bethesda? What's there?

10           A. The National Institutes of Health, of  
11 which one of the institutes is the National Cancer  
12 Institute; a federal program, federal institution for  
13 research of different medical diseases, different  
14 medical problems; also associated with Bethesda Naval  
15 Hospital, which is part of the Bethesda Medical Plant.

16 Q. Thank you. What is hematology?  
17 A. Hematology is a specialty of medicine that  
18 pertains to blood disorders, blood diseases, and blood  
19 cancers like leukemia.  
20 Q. What is oncology?  
21 A. Oncology is a specialty of medicine that  
22 pertains to cancer and in particular solid tumors like  
23 lung cancer, breast cancer, colon cancer.  
24 Q. Have you specialized in treating only  
25 cancer patients for some period of time?  
26 A. Yes.  
27 Q. And that period being?  
28 A. Since 1990, training in cancer

2029

1 specifically since 1987.  
2 Q. Since 1990 have you been practicing only  
3 in Orange County?  
4 A. I practiced for one year in Memphis,  
5 Tennessee, and came to Orange County in 1991.  
6 Q. Is your office someplace near Hoag  
7 Memorial Hospital?  
8 A. My office is in the Hoag Cancer Center,  
9 which is part of Hoag Hospital, Newport Beach.  
10 Q. For those of us who don't venture down to  
11 the Newport Beach area too often, is Hoag a pretty good  
12 hospital?  
13 A. It's been ranked as one of the best 100  
14 hospitals in the United States consistently for the last  
15 four or five years.  
16 Q. I guess this is a chance for you not to be  
17 modest. Is the Hoag Cancer Center a pretty good place?  
18 A. I believe it's a pretty good place. It's  
19 a good place for treatment of diseases. It wouldn't be  
20 at the same level of UCLA or USC as far as research, but  
21 as far as care and taking care of patients and treating  
22 diseases, I personally think it's one of the best in the  
23 country.  
24 Q. Over the course of the years, just in  
25 round numbers, a ballpark, how many people with cancer  
26 have you cared for?  
27 A. On the order of 5,000 or more.  
28 Q. Over the course of years, again a

2030

1 ballpark, roughly how many of those 5,000 had lung  
2 cancer, please?  
3 A. Probably somewhere around 30 to 35 percent.  
4 Q. If my math is right, we are talking  
5 somewhere in the vicinity of 1500 or so lung cancer  
6 patients you cared for?  
7 A. Yes.  
8 Q. What is small cell lung cancer?  
9 A. Lung cancer is divided into two different  
10 categories. One called small cell lung cancer; the  
11 other called non-small cell lung cancer. That  
12 distinction is made by the appearance of the cancer  
13 under the microscope.  
14 Very simply put, small cell lung cancer is  
15 a cancer that is comprised of small cells. At one time  
16 it was called oat-cell carcinoma because it looked like  
17 oats.  
18 The other group of non-small cell cancers  
19 is comprised of several types that are sort of grouped  
20 together: Bronchialveolar, adenocarcinoma, squamous cell

21 carcinoma, large cell carcinoma. Those are all  
22 categorized into the non-small cell group.

23 The behavior of small cell is different  
24 than the behavior of non-small cell. The treatment of  
25 small cell is different from non-small cell; and for  
26 that reason the small cell cancers are sort of culled  
27 out of the group and put into a separate category.

28 Q. Does Betty Bullock have small cell cancer?

2031

1 A. Yes.

2 Q. Is small cell cancer generally thought to  
3 be an inoperable cancer?

4 A. Yes.

5 Q. Why?

6 A. From the onset it's a whole body problem  
7 or it's a systemic problem. Again, the behavior of  
8 small cells differ from a non-small cell. Non-small  
9 cell begins in lung and with time can ultimately spread  
10 or metastasize throughout the body.

11 But from the onset, from the very  
12 beginning, from the time it's diagnosed, small cell is  
13 always a whole body problem; and if you are to operate  
14 and take out the tumor in the lung, that would provide  
15 benefit only in the lung and would have no effect  
16 whatsoever, no impact, on cancer cells throughout the  
17 body; and the cancer cells throughout the body would  
18 grow and lead to problems in short order.

19 Q. For people with non- -- just as a  
20 comparison. For people with non-small cell, not Betty  
21 Bullock, but non-small cell, is the thought that  
22 if you catch it early enough in the lung and you cut it  
23 out right then and there, maybe you can beat it before  
24 it escapes out of the lungs and spreads throughout the  
25 body?

26 A. Yes.

27 Q. And is the idea with small cell lung  
28 cancer, the kind Betty Bullock's got, is that it's

2032

1 already escaped and you can't -- you can't confine it,  
2 so don't cut it?

3 A. Right. It's already escaped in the sense  
4 the horses are out of the barn and closing the gate  
5 won't help.

6 Q. To your knowledge is small cell lung  
7 cancer associated exclusively with smoking cigarettes?

8 A. Yes.

9 Q. When did you first see -- let me withdraw  
10 that.

11 Did you and I have a phone conversation  
12 last night 9:00, 9:30, something like that?

13 A. Yes.

14 Q. Prior to that, had you ever talked to me  
15 before?

16 A. No.

17 Q. Did we go through some of the history and  
18 some of the milestones of your treatment of Ms. Bullock  
19 last night?

20 A. Yes.

21 Q. Were you still in the hospital at that  
22 time treating patients?

23 A. Yes.

24 Q. After you left the hospital and treating  
25 patients, did you have a chance to go back and take a

26 look at Ms. Bullock's medical chart?  
27 A. I looked at part of the medical charts  
28 very briefly.

2033

1 Q. I had a feeling at 9:30 going over to the  
2 office might not be time for a full review.

3 I'm going to put these up on the witness  
4 stand. They are medical records from your office. I am  
5 not asking you to look at them. If you feel you want  
6 to, you may; but as far I'm concerned, you don't have to  
7 open them if you don't want to.

8 When did you first see Ms. Bullock, please?

9 A. I'm glad you gave me these. It was 19 --  
10 it was 2001, and I believe it was -- I will look at the  
11 charts here. Okay. March of 2001.

12 Q. What were the circumstances, please?

13 A. She had been hospitalized with chest  
14 discomfort, chest tightness, and the physician that had  
15 hospitalized her felt that she may have had a blood clot  
16 in the lung called a pulmonary embolus.

17 She was seen by a lung specialist, who  
18 determined it wasn't a blood clot. It was not a  
19 pulmonary embolus but, in fact, it was a side effect or  
20 a toxicity from a medication; and I was asked to see her  
21 to provide a second opinion.

22 Q. Can you tell us roughly how far down the  
23 line from her -- we know this here. It's sort of a test  
24 for you -- how far down the line from her diagnosis was  
25 it when you first saw her in March of 2001?

26 A. Within a couple of weeks.

27 Q. So you saw her where, at Hoag?

28 A. Yeah. She was hospitalized in the

2034

1 hospital, and I saw her in her hospital room.

2 Q. Was the only reason for hospitalization a  
3 possible embolus or blood clot?

4 A. Yeah. The reason for hospitalization was  
5 evaluation of the chest discomfort and cause of the  
6 chest discomfort with a presumptive diagnosis of a blood  
7 clot; and yes, it was the chest discomfort that was the  
8 cause for hospitalization.

9 Q. Thank you.

10 Had a physician already ruled out the  
11 blood clot by the time you got to her?

12 A. Yes.

13 Q. When you assumed her treatment in March,  
14 what is it that you did for her, to her, with her while  
15 she was still in the hospital, please?

16 A. The treatment that had been started before  
17 I assumed her care was a treatment that I was in  
18 complete agreement with, and I continued the treatment  
19 that had already been started or commenced, which was a  
20 combination of chemotherapy and radiation therapy.

21 Q. We have all heard the terms, but I'd  
22 appreciate it if you'd tell us. Let's start with chemo.

23 What's chemotherapy and how does it work?  
24 And when you are done with that, I am going to ask the  
25 same question about radiation therapy.

26 A. Chemotherapy are drugs that kill cancer  
27 cells that are administered into the bloodstream. They  
28 are injected into the blood; and because they go in the

2035

1 bloodstream, they go everywhere. They go throughout the

2 body. If you put it in the blood, the blood goes  
3 everywhere, there is no place in the body that the blood  
4 doesn't go.

5 So that's a whole-body treatment. That's  
6 a systemic treatment, the whole system. It will go to  
7 the chest where the cancer is known to be, where the  
8 mass is, but it will also go everywhere else in the body  
9 where there might be tiny microscopic floaters or tiny  
10 microscopic cells. So that's a whole body treatment and  
11 provides treatment locally in the chest but also  
12 throughout the body, be it the liver, the lymph glands,  
13 the bones.

14 Radiation is X-ray. It's X-ray treatment,  
15 and it's a local treatment. It's not a whole-body  
16 treatment. It's confined to one area; and the benefits  
17 are limited to that area where it's delivered.

18 So if the radiation is given to the chest,  
19 that's where the benefits are, right where the radiation  
20 is given; but if there happens to be cancer elsewhere,  
21 say down here in the liver, taking radiation to the  
22 chest isn't going to have any impact here. So it's a  
23 local treatment, and the benefits are limited to the  
24 site of therapy.

25 Q. What are some of the common downsides or  
26 side effects of chemotherapy, please?

27 A. Nausea, vomiting, weakness, fatigue,  
28 malaise. Depending upon the drugs that are used, a drop

2036

1 in the blood counts, a drop in the white count, which  
2 could increase the risk for infection, a drop in the red  
3 blood count which could lead to weakness, fatigue,  
4 shortness of breath, hair loss, diarrhea, skin rashes.

5 With certain drugs, what's called  
6 neuropathy. This is a sensation of numbness of your  
7 fingers and numbness of your toes. It can be problems  
8 with kidney function, can be problems with heart  
9 function, and problems with mentation or thinking,  
10 cognitive function.

11 Q. As time went on -- are you still treating  
12 Betty Bullock, by the way?

13 A. Yes. I am still treating her now, yes.

14 Q. As time went on from March of 2001 until  
15 August of 2002, has Betty Bullock had any of those side  
16 effects?

17 A. Yes.

18 Q. Is there any one of those side effects  
19 that Betty Bullock hasn't had?

20 A. She hasn't had any kidney problems or  
21 heart problems; but other than that, she's had just  
22 about everything that I just listed.

23 Q. What are the downsides or side effects to  
24 radiation therapy, please?

25 A. A certain dose of radiation is needed to  
26 kill the cancer. What limits the amount of radiation is  
27 the normal tissues within the field, the normal tissues.

28 In this case, giving radiation to the

2037

1 chest, the normal tissues are the lung, the skin, the  
2 esophagus, which is the tube that connects your mouth to  
3 your stomach. All of those things are right there where  
4 you are giving the radiation.

5 So those things are also going to get  
6 treated with that radiation, in a sense get -- for lack

7 of a better term -- burned by that radiation; and  
8 there's a limit to how much radiation those normal  
9 organs within the field can take.

10 Some areas of the body you can't treat  
11 with radiation because the normal tissues would be  
12 damaged irreparably long before the cancer would be  
13 damaged; but in the case, a dose can be given that can  
14 effectively kill the cancer, cause harm to the local  
15 other organs, the other tissues in the area, but in the  
16 majority of cases, that damage or that harm is  
17 reversible.

18 So what's in the area is the lung; and if  
19 the lung gets irritated, it can cause symptoms like  
20 pneumonia because it's an inflammation of the lung and  
21 pneumonia is an inflammation of the lung. So cough and  
22 shortness of breath and fever and pain, like you'd  
23 expect with someone who has pneumonia.

24 If you have irritation of the esophagus,  
25 you can imagine it to be the worst case of heartburn you  
26 have ever had; burning and pain and pain with  
27 swallowing. When the food goes down, it feels like  
28 there's razor blades right there.

2038

1 Some people lose as much as 20 pounds  
2 while taking radiation because they just rather not eat.  
3 It hurts too much to eat.

4 The skin, it can cause redness of the skin  
5 like the worst sunburn you have ever had. It can be  
6 painful, it can itch, it can be ulcerated, it can weep.

7 There can be irritation to the heart,  
8 because the heart is in the same area. It can cause  
9 weakness of the heart, weakness of the heart muscle.  
10 The heart is a pump.

11 There can be damage to the spinal cord  
12 which travels right through the back on the other side.  
13 The beam travels right through and that can lead to  
14 problems with neurologic function, numbness, tingling,  
15 even paralysis.

16 So the toxicities are defined by the  
17 normal organs within the radiation field; in this case,  
18 esophagus, heart, skin, and lung.

19 Q. Did Betty Bullock have any side effects  
20 from radiation therapy?

21 A. She developed severe radiation  
22 esophagitis, which is a severe inflammation of the  
23 esophagus to the point where she needed to be  
24 hospitalized due to dehydration and nutritional  
25 problems.

26 Q. Now, when you say she needed to be  
27 hospitalized, is that on a different time than you have  
28 told us about so far when you first told us about her

2039

1 treatment?

2 A. Yes.

3 Q. That's something else later on down the  
4 line?

5 A. Correct.

6 Q. Why use, as you have told us you did in  
7 this case, both chemo and radiation therapy on one  
8 person?

9 A. The bulk of the disease was in the chest.  
10 That's where we can see it. That was where the mass  
11 was. That's where what we call the macroscopic disease

12 was. The disease elsewhere in body wasn't identifiable  
13 on scans so that was microscopic disease.

14 And over the last 20 years, studies have  
15 shown that if you use chemotherapy for a whole body  
16 management and radiation for a local management, you  
17 will get the best outcome.

18 The chemotherapy actually provides three  
19 different benefits. It treats the microscopic disease  
20 systemically. It does cause shrinkage of the mass  
21 itself. It does shrink the tumor itself, but it also  
22 acts to get into the cancer cells and make the cancer  
23 cells more susceptible to the effects of the radiation.

24 So the chemotherapy kind of gets into the  
25 cancer cells so that the radiation is then more  
26 efficient at killing the cancer cells.

27 And for that reason, the treatment is  
28 given at the same time congruently as opposed to

2040

1 consecutively so you do chemotherapy and later do  
2 radiation. It needs to be done at the same time.

3 Q. As doing the two treatments is hopefully  
4 more effective if you do them at the same time, are the  
5 downsides or the side effects that you mentioned from  
6 each of them worse if you do them at the same time?

7 A. Yes. The toxicities and side effects are  
8 definitely greater: More chance of esophagitis,  
9 irritation of the esophagus; more chance of irritation  
10 of the lung has clearly been shown on many trials; more  
11 chance of drop in the blood counts; a greater chance of  
12 skin problems from radiation.

13 So clearly the toxicities are greater with  
14 the using them at the same time, the congruent or  
15 combined approach; but at the same token you need to  
16 balance that against the fact that numerous studies have  
17 shown repetitively that doing the treatment congruently  
18 at the same time provides a greater chance of long-term  
19 benefit and survival.

20 Q. Thank you.

21 Is lung cancer -- regardless of form;  
22 regardless of small cell, large cell -- is lung cancer  
23 almost certainly, inevitably a fatal disease?

24 A. The majority of patients with lung cancer  
25 will die of their disease.

26 Q. The majority goes all the way from 51 up  
27 to 100. Can you be more precise with a percentage,  
28 please?

2041

1 A. In small cell lung cancer?

2 Q. No.

3 A. In all cancers?

4 Q. So all lung cancer, please.

5 A. It would depend on the stage. It would  
6 depend on the extent of the disease; but I think in  
7 general terms, talking about all lung cancer, the chance  
8 of cure, small. Maybe all lung cancers grouped  
9 together, 25 percent, maybe 30 at best.

10 Q. Thank you. When you say "cure," as I  
11 think you just did in your answer, what does "cure"  
12 mean?

13 A. Cure means that the cancer goes away, is  
14 gone and never comes back again. So cure is that it's  
15 gone and never reappears.

16 Q. Thank you. Now I would narrow the

17 question to small cell lung cancer. What are the  
18 percentages there, please?  
19 A. All small cell?  
20 Q. Yes.  
21 A. If you take all small cell lung cancers,  
22 the cure rates are going to be less than 10 percent,  
23 probably on the order of, all grouped together,  
24 5 percent at best.  
25 Q. Is Ms. Bullock's small cell lung cancer a  
26 fatal disease?  
27 A. Yes.  
28 Q. Does she have a limited life expectancy?

2042

1 A. Yes.  
2 Q. What do you believe that life expectancy  
3 is, please?  
4 A. Today?  
5 Q. As of today.  
6 A. Several months. At this point I would  
7 suspect her life expectancy is less than three months  
8 and maybe less than two months.  
9 Q. At the time of diagnosis, when someone is  
10 diagnosed with small cell lung cancer, does a doctor --  
11 well, do you take a look at the patient and say to  
12 yourself, "This person probably has no more than  
13 X-number of months to live"?

14 A. Yes.  
15 Q. Is that something that you necessarily  
16 share with the patient?  
17 A. Not always in those exact terms. I mean,  
18 we might talk about the chance of response, the chance  
19 of improvement, the chance of being alive at one year,  
20 at three years, at five years.

21 A lot of people aren't quite ready to know  
22 just exactly how bad things might be in their near  
23 future.

24 Q. Right. Is that something that you take  
25 into account in deciding what to share with the patient?

26 A. Yeah. I believe you can hurt people with  
27 the truth.

28 Q. What I'd like to do is show you some

2043

1 medical illustrations, maybe not all at once. I haven't  
2 decided. I will figure it out as I go along.  
3 But these illustrations are of the cancer,  
4 both in the chest and -- we haven't established this  
5 yet -- and has Ms. Bullock's cancer metastasized or  
6 spread to her liver? Yes?

7 A. Yes.  
8 Q. So these illustrations are both the chest  
9 and the liver; and when I, in a minute or so, when I ask  
10 you to take a look at them -- I got the X-rays here if  
11 you want to see them again -- and I'd like you to  
12 confirm that these are accurate medical representations  
13 or illustrations of what the cancer looks like and where  
14 it is.

15 THE COURT: Counsel, have these heretofore been  
16 marked or identified, or are they all going to come in  
17 for the first time today?

18 MR. PIUZE: You are going to be hearing -- the  
19 court will be hearing the numbers for the first time  
20 today.

21 THE COURT: Thank you. Is there going to be any

22 objection to the receipt in evidence or the showing of  
23 these to the jury?

24 MR. BLEAKLEY: No, your Honor.

25 THE COURT: Okay. So if you will just guide us  
26 through the numbers and a brief explanation as to what  
27 each number represents, that would be helpful.

28 MR. PIUZE: 8358.

2044

1 THE COURT: 8358 is what?

2 MR. PIUZE: Left lung mass, 2-19-01.

3 THE COURT: And it is offered in evidence?

4 MR. PIUZE: It is.

5 THE COURT: And it is received in evidence  
6 without objection.

7 \* (Received in evidence Joint  
8 Exhibit number 8358, document.)

10 THE COURT: Okay.

11 MR. PIUZE: I am going to tilt this maybe, but I  
12 will try to tilt it a little more toward -- well, this  
13 is no good for you, your Honor.

14 THE COURT: That's all right. You can just move  
15 that easel back just a tad.

16 MR. PIUZE: Easier said than done. What if I  
17 put it in here? Will that be okay?

18 THE COURT: Last time you put it on the table,  
19 and that's no problem doing that again. I mean  
20 theoretically that's no problem.

21 (Laughter.)

22 (A pause in the proceedings.)

23 MR. PIUZE: If nobody sneezes, we will be okay.

24 THE COURT: Mr. Leiter or Mr. Bleakley, if you  
25 wish to move so that you can see, feel free to do so  
26 without asking. Just pick up and move.

27 MR. LEITER: Thank you, your Honor.

2045

1 MR. PIUZE: Okay.

2 Q. Doctor, I don't know if it will ever be  
3 necessary, if it is necessary, here is a pointer and you  
4 can step down; but if can you do it from here, that's  
5 fine too, and I will use the pointer if you direct me.

6 Is that an accurate medical representation  
7 of the left lung mass that Betty Bullock had in February  
8 of '01?

9 A. Yeah, I think so.

10 Q. Would you? Now I think I need you. Could  
11 you use the pointer and show what it is, what it is  
12 interfering with. I'd appreciate it.

13 A. Okay. Just for orientation, this is the  
14 body, of course, the neck, shoulder, shoulder. There's  
15 a collar bone. There's a collar bone. That's the  
16 windpipe right there, the trachea, just for orientation.

17 This is the lung on the right side. This  
18 is the lung on the left side. These are the ribs and  
19 the ribs; and this down here is the abdomen. That's the  
20 diagram. That's the muscle that separates the chest  
21 from the abdomen.

22 The windpipe comes down to about here and  
23 branches off and gives a branch to the right lung and a  
24 branch to the left lung. Here is the heart. The aorta,  
25 the blood vessel that comes off the heart, comes up and  
26 gives this branch and this branch -- that's the carotids

27 that are going up to the brain. This takes a turn and  
28 goes down to the rest of the body.

2046

1           This is the mass here. That's the tumor.  
2 It's sort of growing in the center part of the chest;  
3 and what's not showing here is there was also some  
4 enlarged lymph glands in front of the windpipe back here  
5 behind the windpipe; and there's some enlargement of  
6 glands next to the windpipe. So a large mass that was  
7 growing in here and growing in this way here.

8           This is the rest of the -- the normal  
9 lung on the left side.

10          Q.     Okay.

11          A.     That was the situation.

12          Q.     While you are up, let me just jump one  
13 series ahead. I might get it slightly out of  
14 chronological sync here, but we won't have you jump up  
15 and down too much.

16           After about --

17           Your Honor, this is 8359, and it's  
18 entitled "Post Radiation and Chemotherapy 6-8-01."

19          THE COURT: Any objection to that being  
20 received in evidence?

21          MR. BLEAKLEY: No, your Honor.

22          THE COURT: It is received.

23          \*       (Received in evidence Joint  
24                   Exhibit number 8359, document.)

25          MR. PIUZE: Why don't you leave that there for  
26 now. Okay? Just for comparison purposes here.

2047

1          Q.     After the chemotherapy and after the  
2 radiation therapy, did that left lung mass shrink a lot?

3          A.     Right. So when it was measured  
4 initially, the widest diameter was 11 centimeters; and  
5 what's remaining now is this small mass here that's a  
6 little bit more 3, 3.3 centimeters; and that's a  
7 substantial decrease in size because it's  
8 three-dimensional. It's not just -- it's  
9 three-dimensional, so a substantial shrinkage.

10           And the other thing, as I mentioned, some  
11 lymph glands in front of the windpipe and next to the  
12 windpipe, those are gone. So these lymph glands  
13 completely and the mass itself has shrunk from 11 to 3  
14 centimeters. This is really three-dimensionally more  
15 than a 90 percent shrinkage.

16           The way we do it -- the way we do it is we  
17 calculate the bi-perpendicular diameter. That's the way  
18 we try to account for the three-dimensional change.

19           So if you take this one, it's 11 times 11,  
20 which is -- that is --

21          Q.     121.

22          A.     Thank you. Okay.

23           And this one here is roughly three times  
24 three. So it's gone from 121 to 9 or almost 10, I  
25 guess. So that's why I say it's a 90-percent shrinkage.  
It's three-dimensional.

26          Q.     So having a 90-percent shrinkage, that's  
27 good, right?

2048

1          A.     It is good. We would like 100 percent,  
2 but it's very good.

3           What's not known now is this mass here --  
4 what's not known is if that's cancer, if it's scar, if  
5 it's shrunk down and just left a residual scar, or if it  
6 could be a combination of both, cancer and scar.

7           Q.     You said before the lymph glands weren't  
8 there or something like that. Where did they go?

9           A.     They have -- the cancer in the lymph gland  
10 has died; and when the cells die, they sort of break  
11 apart and get eliminated from the body. So that's --  
12 they are gone away. It's in a sense, evaporated.

13          Q.     So the cancer is gone, is the lymph gland  
14 still there or not? Is that gone too?

15          A.     There are lymph glands there that are  
16 normal.

17          Q.     Okay.

18          A.     But there is no cancer in those lymph  
19 glands.

20          Q.     One more now. 8360, same date -- excuse  
21 me. Not true. 8-6-01, and this is called Hepatic --

22          THE COURT: Spell that for us.

23          MR. PIUZE: Sure. H-e-p-a-t-i-c.

24                 -- Metastatic Disease.

25          THE COURT: Is there any objection to that  
26 document or that illustration being received in  
27 evidence?

28          MR. BLEAKLEY: No.

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1           THE COURT: It is received.

2          \*       (Received in evidence Joint  
3                      Exhibit number 8360, document.)

4          BY MR. PIUZE:

5          Q.     What does "hepatic" mean, please?

6          A.     "Hepatic" means liver.

7          Q.     Hepatic metastatic disease means what,  
8 please?

9          A.     "Metastatic" means spread. So what this  
10 is saying is liver spread.

11         Q.     All right. I'm going to put it up on the  
12 easel here.

13         Is there cancer in Betty Bullock's liver  
14 as of August '01?

15         A.     Yes.

16         Q.     Can you show us, please.

17         A.     I just -- I can. For orientation, that's  
18 the diaphragm. It separates the chest up here from the  
19 abdomen. So now we are -- earlier we were looking up  
20 here in the chest.

21         Now we are looking down here in the  
22 abdomen. Bellybutton is right about right there; and  
23 this is the liver, here on the right upper part of the  
24 abdomen. This is the stomach.

25         So the esophagus comes down and ties into  
26 the stomach here, and these two deposits here in the

2050

1         liver are deposits of cancer in the liver.

2         Q.     Is the liver a common place for lung  
3 cancer to spread to?

4         A.     Yes.

5         Q.     Okay. You can take your seat again. I  
6 appreciate your getting up.

7                 At anytime during her treatment, did

8 Ms. Bullock ever have breast cancer?  
9 A. No.  
10 Q. Are you aware that there is at least one  
11 or maybe two places in the records that mention breast  
12 cancer?  
13 A. Yes.  
14 Q. Is that just some sort of a clerical or  
15 typographical error where something got into her chart  
16 that doesn't really belong there?  
17 A. Yes. Where that is, if a clerk puts in a  
18 requisition for an X-ray in the computer, she has to put  
19 a reason. There has to be a reason for that or it won't  
20 go through; and sometimes they enter and enter it  
21 correctly, but sometimes they enter what they think it  
22 is or what it might be, and they will just put breast  
23 cancer or lung cancer or whatever.  
24 But all of the people that look at the  
25 information, all of the doctors involved, the nurses  
26 involved, know who entered that information, know why  
27 it's there; and if it's not consistent, if it doesn't  
28 make sense, nobody really pays attention to it.

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1 It's really just a clerical error; and I  
2 think there's one place in her chart or maybe two places  
3 where on an X-ray report, it may say "Reason for X-ray;  
4 breast cancer," but no one involved in her care, nobody,  
5 be it the doctors, nurses, nobody who is taking care of  
6 her believes that she has breast cancer.

7 Q. So sometimes there can be errors, clerical  
8 errors, in medical records?

9 A. Absolutely.

10 Q. If, during the course of this case, anyone  
11 sees a reference to breast cancer, that's a straight-out  
12 clerical error, Ms. Bullock has never had breast cancer?

13 A. Yes. That's a straight-out clerical  
14 error. She has never had breast cancer.

15 Q. Thanks.

16 Here's where I took you away from, I  
17 believe: Ms. Bullock was in the hospital. You took  
18 over her care, you liked the care that she was getting.  
19 It's a combination of chemo and radiation therapy, and  
20 you asked it be continued.

21 Do you remember all that?

22 A. Yes.

23 Q. Okay. Did you discharge her from the  
24 hospital back in March of '01?

25 A. Yes.

26 Q. And did you tell her to come back and see  
27 you for some kind of further treatment, evaluation,  
28 et cetera?

2052

1 A. Yes.

2 Q. What was the reason, please?

3 A. She had received chemotherapy, her blood  
4 counts were dropping, the white count, the red count was  
5 dropping. Her blood counts would need to be monitored  
6 if they continued to drop. Certain medications would  
7 need to be administered to ensure that they didn't drop  
8 dangerously low, possibly even transfusions. So she  
9 needed to have blood counts monitored for that reason.

10 Q. Okay. And is that something that you are  
11 doing to this day?

12 A. Yes.

13 Q. Monitoring her blood count?  
14 A. Yes.  
15 Q. If the blood counts get out of whack, does  
16 that have an effect on the types of treatment or therapy  
17 you can give to her?

18 A. Yes. If the white count gets low and  
19 doesn't recover, that limits what you can do because all  
20 the chemotherapy drugs cause a decline in the white  
21 count, cause a decrease in the white count; and if it's  
22 low, then you can't begin treatment because you don't  
23 have an adequate white blood count to start treatment.

24 The same is true with the platelet count.  
25 White cells fight infection. Platelets help the blood  
26 to clot. If the platelet count is too low, you're  
27 at risk for bleeding and bleeding can be  
28 life-threatening.

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1 So if the platelet count is too low, which  
2 is one of the blood counts, that can also limit the  
3 ability to give treatment or delay treatment or cause  
4 problems with having to reduce doses or reduce the  
5 intensity of the treatment.

6 Q. In the late winter and early spring 2001,  
7 did any of the blood counts come up in such a way that  
8 it affected Ms. Bullock's treatment?

9 A. Late winter of 2001?

10 Q. You know what, let me ask it differently.  
11 You took over in March?

12 A. Of 2001.

13 Q. Between March and June, one of the  
14 pictures we saw was from June.

15 A. Right.

16 Q. Were her blood counts okay, or did --

17 A. During that period of time, her blood  
18 counts were low on multiple occasions.

19 Q. What do you do about that?

20 A. If the red count goes down, we often use  
21 injections of something called Procrit. It's advertised  
22 on TV. If the white count goes down, injections of  
23 something called Neupogen can be used or another drug  
24 called Lukine is sometimes used.

25 If the white count is low and remains low,  
26 there is a risk of infection and patients can get  
27 infections. If the red count is low and remains low and  
28 doesn't respond, doesn't improve with Procrit, you may

2054

1 need transfusions of red blood cells. If the platelets  
2 are low to a dangerous level, you need transfusions of  
3 platelets.

4 Q. Has Ms. Bullock over the course of time  
5 had -- you described in terms of easy, hard,  
6 intermediate course during her treatment?

7 A. I would say that her course has been  
8 difficult and fraught with more problems along the way  
9 than the average or typical patient.

10 Q. Your reasons for saying that, please?

11 A. She has had severe radiation and  
12 esophagitis, irritation of the esophagus that we have  
13 already talked about. She has had difficulty with a  
14 blood clot in one of the big veins under the collar bone  
15 which has required that she be on blood thinners.  
16 That creates an increased risk for bleeding. It  
17 requires more monitoring.

18           She has had problems with neuropathy  
19 somewhat more severe than usual and numbness and  
20 tingling of the hands and feet. She's had lower blood  
21 counts than usual needing more injections to support her  
22 blood counts. She has needed transfusions. Some  
23 patients can go through treatment without any need for  
24 transfusions.

25           She has had difficulty with thinking, with  
26 mentation, more so than the typical patient. It's not a  
27 medical term, but patients will call that chemo-brain.  
28 They just sense they are just not quite as sharp as they

2055

1 were before they started chemotherapy.

2           Q. That's a pretty long list.

3           Now, do you know how many times  
4 Ms. Bullock has been hospitalized since March?

5           A. No. Several. Three, four perhaps.

6           Q. Okay. Do you know how long the  
7 hospitalizations have been since March?

8           A. No, not off the top of my head. Several.  
9 I know the hospitalization for esophagitis was for a  
10 week, maybe ten days.

11          Q. You don't have to look it up. We can look  
12 it up later if we want.

13          Do you know, though, that she's been a  
14 trooper?

15          A. Yes.

16          Q. Explain why.

17          A. She is not a complainer. She is not a  
18 whiner. She accepts things. I have had to give her bad  
19 information on more than one occasion. The day we got  
20 that scan, it was not an easy task to have to say,  
21 "Things in the chest are good, things in the chest look  
22 fine, but now we have a new problem, it's in the liver,"  
23 and that wasn't there just two months ago when that  
24 previous scan was done that showed the 3.3 centimeter  
25 mass.

26          And there's been a waxing and waning  
27 course since then. We have given her treatment. Things  
28 have gotten better. Then we have reassessed, things

2056

1 have worsened; and since March of 2001 when we began her  
2 treatment, she has really been on treatment consistently  
3 since then. She has really never had a window, a  
4 break. She's never been off treatment; and despite all  
5 that, she's a -- good word for it -- she's just been a  
6 trooper. She just stays with it.

7          Q. Do most patients get a window or a break?

8          A. Yes. By far and away, the majority of  
9 patients would have a period of time, six months, a  
10 year, perhaps even longer, where they were free of  
11 disease and could enjoy a normal lifestyle.

12          Q. Why hasn't she had a window?

13          A. This scan that was done on August 6 was  
14 done when her initial treatment plan was completed, six  
15 cycles of chemotherapy and radiation; but this scan  
16 showed that the cancer in the chest was gone but now  
17 there was cancer in the liver.

18          That would have been the time when she  
19 might have been able to be off treatment, but with new  
20 cancer developing in the liver, she needed to continue  
21 treatment; and since that time, her scans have shown  
22 improvement, they have shown worsening, but she has

23 never been free of cancer.

24 Q. Has Ms. Bullock already gone on longer  
25 than you thought she would?

26 A. Absolutely.

27 Q. Here is 8452. The date is 7-24-02. The  
28 title is "Post-radiation and Chemotherapy."

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1 THE COURT: Could I have that number one more  
2 time?

3 MR. PIUZE: 8452.

4 THE COURT: I'm sorry?

5 MR. PIUZE: 8452.

6 THE COURT: Thank you. And that is being  
7 offered in evidence without objection. Any objection to  
8 that?

9 MR. BLEAKLEY: No, your Honor.

10 THE COURT: All right. It is received.

11 \* (Received in evidence Joint  
12 Exhibit number 8452 document.)

13 THE COURT: Thank you.

14 BY MR. PIUZE:

15 Q. So this is less than a month ago?

16 A. Correct. I think less than a month ago.

17 Q. Has her liver cancer gotten worse?

18 A. Yeah. This is from just recently,  
19 July 24, last month. Between this one and the previous  
20 one that we looked at, there was a scan; and those spots  
21 in the liver on the previous scan had gone away.

22 So they went away with chemotherapy, and  
23 that was sometime in the early part of 2002, maybe  
24 January of 2002.

25 (A pause in the proceedings.)

26 A. So those spots that you see now in the

2058

1 liver, those two white spots in the liver, those are  
2 new. They are not the same spots that were there  
3 before. They are in different areas, and they are not  
4 the same deposits that were there.

5 Those two deposits there before are gone  
6 away, and these are two deposits of cancer that are new;  
7 and as time goes on, the cancer becomes more resistant.  
8 The survival of the fittest, so to speak, but sort of  
9 like weeds in the garden. After a while you have to  
10 change to a new weed killer because they get resistance.

11 So these are two new deposits of cancer in  
12 the liver, and the cancer is now becoming angry. It's  
13 becoming resistant and much, much more aggressive.

14 Q. What about up in the lung?

15 A. In the chest some fluid has developed  
16 around the heart. It says there, "Pericardial Fusion."  
17 What that means is fluid accumulating around the heart,  
18 and that's a sign that there's cancer cells.

19 The heart sits in a sac, in a membrane;  
20 and that's a sign that there's likely cancer cells in  
21 the side of the membrane and irritating the membrane  
22 causing fluid to accumulate. Kind of like if you've got  
23 an inflamed joint, the joint will swell from  
24 inflammation.

25 Q. Okay. Have you explained everything that  
26 is pertinent on this exhibit now?

27 A. There's a little bit of fluid in the left

28 chest, a little bit of fluid in the left lung cavity

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1 which could also be related to cancer for the same  
2 reason. There may be cancer cells deposited in the left  
3 chest cavity.

4 Q. Does it hurt?

5 A. Yeah. The fluid causes an inflammation of  
6 the lining of the lung. So it's inflamed, kind of like  
7 it's sunburned. So when the lung -- when you take a  
8 breath, if this is the lining of the chest cavity, the  
9 lung sits here like a balloon. Take a breath, the  
10 balloon fills and touches and that's the pleurisy. That  
11 sharp pain is what -- you don't really want to take a  
12 deep breath because it hurts or if you cough it hurts.

13 Q. Has all the treatment that Ms. Bullock has  
14 received been necessary to deal with, stop, slow down,  
15 cure, to the best of your ability, her small cell lung  
16 cancer?

17 A. Yes.

18 Q. Did I ask you last night to think about  
19 whether or not \$321,000 seemed like a reasonable amount  
20 of billing for the treatment she has had?

21 A. We talked about that last night; and  
22 considering all the treatment that she has, between  
23 radiation, chemotherapy, diagnostic scans, medications,  
24 hospitalizations, I thought that was within line and  
25 reasonable.

26 Q. As part of your treatment of Ms. Bullock's  
27 lung cancer, did you have anything to say to her about  
28 smoking?

2060

1 A. Yes.

2 Q. What?

3 A. To quit smoking, stop smoking.

4 Q. What happened, do you know?

5 A. She stopped.

6 Q. Do you know how long she stopped for?

7 A. Not exactly. I know she stopped for a  
8 considerable period of time, maybe as much as almost a  
9 year, eight, nine months.

10 Q. Do you know why she started again?

11 A. My understanding is she started smoking  
12 because the tumor had metastasized or spread. And  
13 that's common. I mean, patient's feelings are "I'm  
14 going to die anyway, why suffer?"

15 Q. Why suffer?

16 A. Stopping smoking. It's addictive. It's  
17 not easy to stop. It's, I think, very difficult; and in  
18 some ways I think it's -- if you are addicted to  
19 cigarettes and you have to stop, it's a form of  
20 suffering.

21 MR. PIUZE: Okay. That's a good place for me to  
22 say no further questions. Thank you very much.

23 THE COURT: And it is a good place for me to say  
24 we will take our afternoon recess.

25 Do not discuss the case amongst  
26 yourselves or with anyone else. Do not form or express  
27 any opinion on the matter until it's finally submitted  
28 to you.

2061

1 Fifteen minutes. I have a little business  
2 to deal with, with the lawyers, so it may be a shade  
3 more than that.

4  
5       (The following proceedings were held  
6       in open court outside the presence  
7       of the jury: )  
8

9       THE COURT: I think the record will reflect the  
10      jurors have left the courtroom.

11           I have a couple of short issues just to  
12      ask about. A guesstimate as to the length of time of  
13      this witness on cross-examination? We are trying to  
14      give you some clue, Doctor, of when you can fight the  
15      traffic.

16           THE WITNESS: I appreciate that.

17           MR. BLEAKLEY: Somewhere between a half hour and  
18      45 minutes.

19           THE COURT: Okay. You may wait outside.

20           THE WITNESS: Thank you.

21           THE COURT: Next area. Am I correct in assuming  
22      that after this witness has finished, the next order of  
23      business, which will probably be tomorrow morning, will  
24      be the reading of the transcript?

25           MR. PIUZE: Not as phrased. If the next order  
26      of business is tomorrow morning, it will be Dr. Farone.

27           THE COURT: Okay. Okay. So it's going to be  
28      a -- it may not be today that we read any more

2062

1      transcript?

2           MR. PIUZE: That will be your -- if I'm hearing  
3      the estimates right, that's going to be strictly your  
4      decision.

5           THE COURT: Well, here's the issue. The issue  
6      is, do we want to cut the remainder of the transcript  
7      into bits and pieces, or would you rather reserve it,  
8      assuming we finish at a fairly reasonable hour, you  
9      know, like a quarter of 4:00 or something, and break a  
10     little early so that you won't have it chopped up? And  
11     that's pretty much your call.

12           MR. PIUZE: May I confer here for a second?

13           THE COURT: Yes, you may.

14           (A pause in the proceedings.)

15           THE COURT: I am not troubled with the idea of  
16      going as long as we can.

17           (A pause in the proceedings.)

18           MR. PIUZE: I am in no huge hurry to get the  
19      thing read today, your Honor.

20           THE COURT: Okay. You should also know,  
21      Mr. Bleakley, I have revisited Section 1292 of the  
22      Evidence Code, which essentially deals with civil  
23      trials; and I am now persuaded that Mr. Leiter's  
24      recollection is correct; and 1292 says that evidence of  
25      former testimony is not made inadmissible by the hearsay  
26      rule if the declarant is unavailable as a witness, and  
27      that is certainly the case apparently here.

28           Two, that the former testimony is offered

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1      in the civil trial, and that's this.

2           And three, that the issue is such that the  
3      party to the action or proceeding in which the former  
4      testimony was given had the right and the opportunity to  
5      cross-examine the declarant with an interest and a  
6      motive similar to that which the party against whom the  
7      testimony is offered has at the hearing.

8           And finally (b), the admissibility of

9 former testimony under this section is subject to the  
10 same limitations and objections as though the declarant  
11 were testifying at the hearing, except that the former  
12 testimony offered under this section is not subject to  
13 objections based upon competency or privilege which did  
14 not exist at the time the former testimony was given.

15         The citation that was given, incidentally,  
16 was People versus Chavez, and it's 4 Cal.App.3d 832.  
17 That does deal with a criminal case, and it deals with a  
18 right of confrontation and the fact that a defendant  
19 cannot complain about the testimony read when there was  
20 testimony at a preliminary hearing or a previous  
21 proceeding wherein that person had the opportunity of  
22 making objections and what have you.

23         So, where we are, to boil this down, is to  
24 those areas to which you spoke earlier wherein you  
25 believe that the question is calling for inadmissible  
26 evidence, you should do as I suggested when you were at  
27 benchside; make that objection and I will rule on it  
28 even though it may be made for the first time in this

2064

1 trial.

2         MR. BLEAKLEY: And I presume that means that if  
3 we want to, we can go back and file a motion to strike a  
4 portion which has already been read?

5         THE COURT: That's true, you may.

6         MR. BLEAKLEY: Okay. Thank you.

7         THE COURT: And that also would apply as to the  
8 previous transcript of a trial that was read; that is,  
9 go and make motions to strike.

10        MR. BLEAKLEY: Okay.

11        THE COURT: Okay. Thank you.

12        THE COURT: Fifteen minutes, starting now.

13  
14                     (A recess was taken in the proceedings.)

15                     August 28, 2002. Take D FINAL

16  
17                     (The following proceedings were held  
18                     in open court within the presence of  
19                     the jury:)

20  
21                     THE COURT: The record will reflect the witness  
22                     is still on the stand and you are still under oath. The  
23                     jury's in the box, and we may begin the  
24                     cross-examination.

25  
26                     MR. BLEAKLEY: Thank you, your Honor.  
27                     Good afternoon, everyone.

2065

1                     (All respond.)

2  
3                     \*                     CROSS-EXAMINATION

4  
5                     BY MR. BLEAKLEY:

6                     Q.             Good afternoon, Dr. Vandermolen.

7                     A.             Good afternoon.

8                     Q.             My name is Peter Bleakley, and I am one of  
9                     the attorneys for the defendant Philip Morris in this  
10                    case.

11                    We have never met before, have we?

12                    A.             No.

13                    Q.             Am I correct that you have never treated

14 or met Mrs. Bullock prior to March of 2001?  
15 A. Correct.  
16 Q. Or any members of her family?  
17 A. Correct.  
18 Q. You said on direct examination -- if I  
19 don't state it exactly the way you said it, correct  
20 me -- but I think what you said is your understanding  
21 was that Mrs. Bullock quit smoking for almost or up to a  
22 year, something like that?  
23 A. Yeah. I said I wasn't certain, but  
24 somewhere around a year, thereabouts.  
25 Q. Somewhere around a year.  
26 In fact, when you first took over  
27 Mrs. Bullock's care in March of 2001, you learned that  
28 she had not been smoking for three months prior to her

2066

1 diagnosis with cancer; isn't that right?  
2 A. I'd have to look at the record. I don't  
3 recall.  
4 Q. Okay.  
5 A. But if it's in the record, we can read it.  
6 MR. BLEAKLEY: I have taken portions of the  
7 record out and identified them separately as exhibits,  
8 your Honor, if that's all right.  
9 THE COURT: Well, if you want to give me a  
10 number.  
11 MR. BLEAKLEY: I will. I think it will save  
12 time, rather than to go looking for things the way we  
13 did this morning.  
14 THE COURT: Sure. All right. What number?  
15 MR. BLEAKLEY: This is what is marked as  
16 Exhibit 12278. It's entitled "Second Opinion Medical  
17 Oncology Consultation," dated 3-26-2001, and it is  
18 signed by Dr. Vandermolen.  
19 THE CLERK: I'm sorry? "Second Opinion"?20 MR. BLEAKLEY: That was the title.  
21 THE COURT: "Second Opinion" and then you said  
22 something else.  
23 MR. BLEAKLEY: "Second Opinion Medical Oncology  
24 Consultation."  
25 THE COURT: Okay.

26

27 \* (Marked for identification Joint  
28 Exhibit(s) 12278, document.)

2067

1  
2  
3 BY MR. BLEAKLEY:  
4 Q. Do you have that document in front of you,  
5 Doctor?  
6 A. Yes.  
7 THE COURT: Is there any objection to it being  
8 received in evidence?  
9 MR. PIUZE: No.  
10 THE COURT: All right. It is received and you  
11 may go forward.  
12  
13 \* (Received in evidence Joint  
14 Exhibit number 12278, document.)  
15  
16 BY MR. BLEAKLEY:  
17 Q. And this is your notes of your initial  
18 consultation with Mrs. Bullock; is that right?

19           A.     Correct.  
20           Q.     And on page 3 of this exhibit, at the top  
21 of the page there's a section entitled, "Social  
22 History."  
23           Do you see that?  
24           A.     Yes.  
25           Q.     And there it says, "She is a widow. She  
26 has smoked cigarettes, has a 60 pack-year history. She  
27 has abstained for the last three months"?  
28           A.     Yes.

2068

1           Q.     Do you see that?  
2           A.     Yes.  
3           Q.     So in March your records show that  
4 Mrs. Bullock had not been smoking for three months,  
5 which includes at least two months of a period before  
6 her diagnosis with cancer; is that right?  
7           A.     Yes.  
8           Q.     Okay. And then --  
9           A.     Sorry. She actually developed cough and  
10 and congestion in January of 2001.  
11          Q.     I understand.  
12          A.     Well, that cough and congestion was a sign  
13 of cancer.  
14          Q.     But my question was: Before her diagnosis  
15 with cancer, she had stopped smoking for at least two  
16 months?  
17          A.     Correct.  
18          Q.     Exhibit 12282, which is a portion of the  
19 medical record relating to Mrs. Bullock, dated  
20 3-30-2001, it doesn't have a title on it, but it said  
21 "Date of Admission."  
22          Do you see that?  
23          A.     Yes.  
24          Q.     And on page 2 of that document there is a  
25 section, "Social History." It says she has abstained  
for the past four months, correct?  
27          A.     Correct.  
28          THE COURT: Incidentally, do you want this

2069

1 received in evidence?  
2           MR. PIUZE: I was going to offer three of them  
3 at the same time, but I will do it as we go along.  
4           THE COURT: Any objection?  
5           MR. PIUZE: No.  
6           THE COURT: Okay. It is received.  
7  
8 \*       (Received in evidence Joint  
9       Exhibit number 12282, document.)

10           THE COURT: The first two are now in.  
11 BY MR. BLEAKLEY:  
12          Q.     And then there is Exhibit 12283, which is  
13 a document, again, without a title; but it's, "Date of  
14 Admission: 4-14-2001. Reason for admission:  
15 Gram-positive bacteremia."  
16           And this is a medical record of yours  
17 stating, among other things, at page 2 under "Social  
18 History," "but has abstained for the past five months,"  
19 correct?  
21          A.     Correct.  
22          Q.     So at this point in time, while it has  
23 been a month-plus since her diagnosis with cancer, she

24 has abstained for five months from smoking, which  
25 includes at least two months before her diagnosis with  
26 cancer and a couple of months after, right?

27 A. Yeah. On March 6 I say three months, and  
28 so early March and mid-April, which is a month and a

2070

1 half later almost, I say five months. That's correct.

2 Q. Thank you.

3 I would move the admission of 12283 as  
4 well.

5 THE COURT: It is received.

6  
7 \* (Received in evidence Joint  
8 Exhibit number 12283, document.)  
9

10 BY MR. BLEAKLEY:

11 Q. So your medical records show that she had  
12 stopped smoking before she was diagnosed with cancer for  
13 at least two months. They show that she had continued  
14 to refrain from smoking for another two months; and your  
15 testimony is that it is your understanding that she  
16 continued to refrain from smoking for almost a year,  
17 right?

18 A. I said I wasn't certain; and I think I  
19 said around a year, and then I think I said eight, nine  
20 months, something like that.

21 Q. I am not trying to pin you down.

22 A. Okay.

23 Q. I am just saying this went on for several  
24 months, the fact that she did not smoke?

25 A. My understanding is that she didn't smoke  
26 until she developed metastatic disease.

27 Q. Now, when you took over the care of  
28 Mrs. Bullock from Dr. Fong, you were provided with

2071

1 access to the medical records that Dr. Fong had as well,  
2 weren't you?

3 A. Not immediately.

4 Q. But you were eventually, weren't you?

5 A. I was given the pertinent records, the  
6 records that I required.

7 Q. You were given records from Dr. Fong and  
8 Dr. Morrica? Am I pronouncing that correctly, Dr. Bruce  
9 Morrica?

10 A. Yeah. Dr. Bruce Morrica was the pulmonary  
11 doctor, and I'm not sure that I got his records.

12 Q. But you were provided with Dr. Fong's  
13 records, right?

14 A. I spoke to Dr. Fong personally. I spoke  
15 to Dr. J. Tassin, who is a radiation therapist who was  
16 treating her at the time. I spoke with her primary  
17 doctor at the time, Dr. Scott Jenkins.

18 I communicated with all three of those  
19 doctors, and I had the hospital record to review at the  
20 time that I saw her in March.

21 Q. Including the hospital records for the  
22 consultations that Dr. Fong and Dr. Morrica had had with  
23 her in February of 2001, right?

24 A. No. That hospital record had Dr. Fong's  
25 history and physical exam. The hospital record had  
26 results of previous CAT scans and X-rays, and it had  
27 results of biopsies that had been done, pathology  
28 reports that had been done.

1                   Dr. Fong's initial consultation was  
 2 probably in his office chart, but it was not in the  
 3 hospital chart.

4           Q.     Did you -- did Dr. Fong tell you what his  
 5 understanding was of Mrs. Bullock's age when she took up  
 6 smoking?

7           A.     No.

8           Q.     He didn't tell you that his understanding  
 9 was she started at the age of 28?

10          A.     We didn't talk about her smoking.

11          Q.     And you didn't learn either from his  
 12 records or from talking directly to Dr. Bruce Morrica  
 13 that he also understood that she had started smoking  
 14 when she was 28?

15          A.     No.

16          Q.     When your deposition was taken in this  
 17 case in December of 2001 -- do you remember that?

18          A.     Yes.

19          Q.     Your testimony then was -- and it's, I  
 20 take it, consistent with what you are saying now -- was  
 21 that your understanding was that at that point in time  
 22 she was still not smoking?

23          A.     I think at that time it was my  
 24 understanding that she was not smoking, that's correct.

25          Q.     Now, you have believed that cigarette  
 26 smoking causes lung cancer at least since 1977, haven't  
 27 you?

28          A.     Well, I began medical school in 1977. Is

1                   that what you are getting at?

2          Q.     Yes.

3          A.     Yeah. My education in 1977 in medical  
 4 school was that cigarette smoking causes lung cancer.

5          Q.     And you believed it?

6          A.     Yes, I did believe it.

7          Q.     And you have been telling your patients  
 8 that they should not smoke since you graduated from  
 9 medical school in 1980, was it?

10         A.     Correct.

11         Q.     Right. You have been telling your  
 12 patients not to smoke and if they smoked to quit smoking  
 13 since then?

14         A.     Correct.

15         Q.     And the reason you tell them is because  
 16 it's dangerous?

17         A.     Correct.

18         Q.     That it causes serious diseases?

19         A.     That's true.

20         Q.     That it causes diseases like lung cancer?

21         A.     Correct.

22         Q.     And chronic obstructive pulmonary  
 23 disease.

24         A.     Right.

25         Q.     And you tell them that chronic obstructive  
 26 pulmonary disease is a very serious disease?

27         A.     I'm not a lung specialist, and I don't  
 28 really comment about lung disease.

1          Q.     But you understand that it is a serious  
 2 disease?

3          A.     I understand that chronic obstructive lung  
 4 disease is a serious disease, yes.

5 Q. It includes emphysema?  
6 A. Emphysema, in my mind, in my opinion, is a  
7 type of chronic obstructive lung disease.  
8 Q. And a very serious one?

9 A. There are different degrees. There are  
10 degrees that are serious and there are degrees that are  
11 not serious.

12 Q. It can be fatal, can it not?

13 A. It can be fatal.

14 Q. And it's been standard medical practice  
15 for physicians like yourself to tell their patients that  
16 they should not smoke or to stop their smoking for a  
17 long time, hasn't it?

18 A. Yeah. I have been telling patients not to  
19 smoke, telling friends not to smoke, telling anybody who  
20 will listen not to smoke since I was in medical school.

21 Q. And you know that Mrs. Bullock, the  
22 plaintiff in this case, has been suffering from chronic  
23 obstructive pulmonary disease for a long time before she  
24 was diagnosed with cancer, don't you?

25 A. No. My understanding is she has had  
26 chronic bronchitis.

27 Q. You have not learned in the course of your  
28 treatment of Mrs. Bullock that she was diagnosed with

2075

1 chronic obstructive pulmonary disease in the 1980s?

2 A. Chronic bronchitis is a type of chronic  
3 obstructive pulmonary disease.

4 Q. So you do know that she had chronic  
5 obstructive pulmonary disease in the 1980s?

6 A. Yeah. She has chronic bronchitis, but I  
7 think you asked me if I knew she had emphysema.

8 Q. No. I asked you if you knew she had  
9 chronic obstructive pulmonary disease. What difference  
10 does it make what I did ask you.

11 My question now is: You knew that she had  
12 chronic obstructive pulmonary disease back in the 1980s,  
13 right?

14 A. I knew that she had a history of  
15 bronchitis, chronic bronchitis, and that is a type of  
16 chronic obstructive pulmonary disease.

17 Q. If you had had a patient back in 1980 with  
18 chronic obstructive pulmonary disease, you would have  
19 told that patient they better stop smoking, wouldn't  
20 you?

21 A. Yes.

22 Q. You would have been especially emphatic  
23 with somebody who is already suffering from chronic  
24 obstructive pulmonary disease, wouldn't you?

25 A. Yes.

26 Q. You would have told them that if they  
27 stopped smoking, they would reduce their risk of getting  
28 even more serious diseases, wouldn't you?

2076

1 A. Certainly.

2 Q. And, in fact, if Mrs. Bullock had stopped  
3 smoking back in the 1980s, her risk of contracting lung  
4 cancer would have been significantly decreased,  
5 wouldn't it?

6 A. Yes.

7 Q. In fact, you even told her she should stop  
8 smoking after the recurrence of her cancer, didn't you?

9 A. Yes.

10 Q. Now, I want to ask you a few questions  
11 about the testimony you gave here this afternoon about  
12 chemo-brain, I think you called it. I realize that  
13 wasn't your term, but you said patients sometimes call  
14 it chemo-brain, right?

15 A. Yes.

16 Q. You said that people -- I think I quoted  
17 you. I wrote down exactly what you said. You said  
18 people are not quite as sharp as before chemotherapy; is  
19 that right?

20 A. What I meant was patients who are taking  
21 chemotherapy, those people.

22 Q. Are not quite as sharp as they were before?

23 A. That's correct.

24 Q. Is that all patients or some patients?

25 A. It's a significant number. Maybe a  
26 majority.

27 Q. And you had -- you also said, I think, she  
28 has had difficulty with thinking, mentation, right?

2077

1 A. Yes.

2 Q. Now, you know that Mrs. Bullock has given  
3 sworn deposition testimony in this case, do you not?

4 A. Yes.

5 Q. You know that her deposition was taken  
6 under oath back in October of 2001?

7 A. I don't know when it was.

8 Q. And that she also gave some sworn  
9 testimony in this case just this past weekend?

10 A. I am not aware of that.

11 Q. You didn't know -- you haven't read the  
12 deposition that she gave in October 2001?

13 A. No, I have not.

14 Q. And you haven't read the testimony that  
15 she gave this past weekend?

16 A. No, I have not.

17 Q. So you don't know for a fact that this  
18 chemo-brain, assuming that it exists and that it has had  
19 an effect, you don't know whether it had any affect on  
20 the testimony that Mrs. Bullock gave in October 2001, do  
21 you?

22 A. No.

23 Q. And you don't know that the chemo-brain,  
24 assuming that it exists and assuming she had it, that it  
25 had any impact on the testimony she gave this past  
weekend?

26 A. No.

27 Q. Now, in August of 2001, you changed the

2078

1 chemotherapy treatments that you were giving, you  
2 changed the drugs?

3 A. Correct.

4 Q. I'm probably going to butcher the  
5 pronunciation of that, but as I understand it, you  
6 changed from Cisplatin --

7 A. Cisplatin.

8 Q. Cisplaatin? I did butcher it.

9 -- to Hycamtin and Taxotere?

10 A. Her initial treatment was Cisplatin and  
11 the second drug called Etoposide.

12 Q. Okay.

13 A. And then she was switched to two drugs,  
14 Topotecan and Hycamtin.

15 Q. Not Taxotere?  
16 A. Topotecan and Hycamtin are the same; and  
17 the second drug is Taxotere.  
18 Q. Okay. And when her deposition was taken  
19 in this case in October 2001, the chemotherapy that she  
20 was under was Hycamtin and Taxotere, correct?  
21 A. Yeah. I think her treatment was switched  
22 sometime later in the fall. So I think that's right.  
23 It was Topotecan and Hycamtin at that time or Taxotere  
24 and Hycamtin.  
25 Q. Now, you said that you don't remember when  
26 her deposition was taken in the case, her sworn  
27 deposition was taken in the case, but I am going to  
28 represent to you that it was taken during the early part

2079

1 of October of 2001. Okay?

2 A. Yes.

3 Q. You were seeing Mrs. Bullock during that  
4 period of time, were you not?

5 A. Correct.

6 MR. BLEAKLEY: I have marked for identification  
7 as Exhibit 12288, a document entitled, "Orange Coast  
8 Oncology Hematology Medical Associates, Inc."

9 THE COURT: Let me make sure that I have the  
10 correct number on this.

11 MR. BLEAKLEY: 12288.

12 THE COURT: That's what I have, and tell me  
13 again the title.

14 MR. BLEAKLEY: The title is, "Orange Coast  
15 Oncology Hematology Medical Associates, Inc." It's a  
16 report.

17 THE COURT: And the date?

18 MR. BLEAKLEY: The date is October 3, 2001.

19  
20 \* (Marked for identification Joint  
21 Exhibit(s) 12288, document.)

22 BY MR. BLEAKLEY:

23 Q. You know what the Orange Coast Oncology  
24 Hematology Medical Associates, Inc. is, don't you?

25 A. Yes.

26 Q. That's your organization?

27 A. Correct.

2080

1 Q. This is a report of a visit with Betty  
2 Bullock on that day, right?

3 A. Yes.

4 Q. And the first paragraph reads --

5 THE COURT: Is that received in evidence?

6 MR. BLEAKLEY: I'm sorry. I offer it in  
7 evidence.

8 THE COURT: Any objection?

9 MR. PIUZE: No.

10 THE COURT: It may be received.

11  
12 \* (Received in evidence Joint  
13 Exhibit number 12288, document.)

14  
15 THE COURT: You may quote.

16 BY MR. BLEAKLEY:

17 Q. The first paragraph reads:  
18 "The patient is seen today  
19 in followup for small cell lung

20                   cancer. She is on day 9 of her  
21                   third cycle of Taxotere and  
22                   Hycamtin."  
23                   No matter how hard I try, I am not going  
24                   to pronounce it right. (Reading:  
25                   "She is doing well and  
26                   offers no complaints."  
27                   Do you see that?  
28                   A. Yes.

2081

1                   Q. There were no complaints in this record  
2                   from Mrs. Bullock on that day that she was having any  
3                   difficulty with thinking or mentation in this report?

4                   A. You are asking me if that's what this  
5                   says?

6                   Q. I'm asking you if that's what it says.

7                   A. That is what it says, but I guess I should  
8                   point out I didn't write this.

9                   Q. Now I am going to show you a --

10                  A. This was just so the jury, I think, knows,  
11                  this is written by Jacqueline Grandt, who is my nurse  
12                  practitioner. So that's what it says, but I can't --

13                  Q. That's apparently what she told  
14                  Ms. Grandt, right?

15                  A. Right. But don't ask me what she told  
16                  Jackie Grandt.

17                  Q. Exhibit 12287 is a similar report dated  
18                  October 4, one day later.

20                  \* (Marked for identification Joint  
21                  Exhibit number 12287, document.)

23                  BY MR. BLEAKLEY:

24                  Q. Same report, right? She is doing well?

25                  A. Yes. October 4, again, a report that  
26                  was written by Jackie Grandt, nurse practitioner, who  
27                  works with me.

28                  Q. Who reports that Mrs. Bullock is doing

2082

1                  well and offers no complaints, correct?

2                  A. Correct.

3                  THE COURT: Is that now offered?

4                  MR. BLEAKLEY: I am going to offer that in  
5                  evidence, your Honor.

6                  THE COURT: Any objection?

7                  MR. PIUZE: No.

8                  THE COURT: It may be received.

10                 \* (Received in evidence Joint  
11                 Exhibit number 12287, document.)

13                 BY MR. BLEAKLEY:

14                 Q. Exhibit 12285 is a similar report dated  
15                 October 8, 2001.

16                 A. Yes.

17                 MR. BLEAKLEY: I would offer that, 12285.

18                 THE COURT: It is received. I take it there is  
19                 no objection?

20                 MR. PIUZE: You take it correctly, your Honor.

21                 THE COURT: All right.

23                 \* (Received in evidence Joint  
24                 Exhibit number 12285, document.)

25  
26 BY MR. BLEAKLEY:

27 Q. Once again, Betty Bullock is seen by your  
28 nurse. She says, "She offers no complaints and denies

2083

1 fever, sweats, or bleeding," correct?

2 A. Correct.

3 Q. I am going to represent to you again that  
4 this is the period during which Mrs. Bullock's sworn  
5 deposition testimony was taken in this case and that she  
6 was visiting your office and your nurse, during this  
7 period of time, and reported no difficulty in thinking  
8 or mentation, at least according to your nurse  
9 practitioner.

10 MR. PIUZE: That assumes facts not in evidence.  
11 I haven't heard that from these records. I object to  
12 that.

13 THE COURT: Your objection is that the records  
14 speak for themselves, they are in evidence and whatever  
15 they say, they say?

16 MR. PIUZE: No. My objection is that unless  
17 Mr. Bleakley has forgotten to read that, the records  
18 don't say that.

19 THE COURT: No, no. Maybe I didn't make myself  
20 clear. You are objecting to him attempting to quote  
21 from a document; and you are saying that the -- it's an  
22 improper use of the document, and if he wants to refer  
23 to the document, he can either quote it correctly or  
24 just refer to the document?

25 MR. PIUZE: I don't think he's attempting to  
26 quote from it. I think he's made up words that aren't  
27 in there, and that's what I am objecting to.

28 THE COURT: Well --

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1 MR. PIUZE: There is no foundation. It doesn't  
2 say that. None of them say that.

3 THE COURT: Wait, Counsel. Objections are not  
4 final argument.

5 MR. PIUZE: I'm sorry.

6 THE COURT: Objections have rules and you know  
7 them. Now, what is the objection to this, lack of  
8 foundation?

9 MR. PIUZE: Yes, sir.

10 THE COURT: All right. May I see the  
11 documents?

12 MR. PIUZE: Yes.

13 (A pause in the proceedings.)

14 THE COURT: Each of the documents bears the same  
15 sentence that ends the first paragraph, and that  
16 sentence is, in each case, quote, "She is doing well and  
17 offers no complaints. She denies fevers, sweats, or  
18 bleeding."

19 Thank you.

20 BY MR. BLEAKLEY:

21 Q. Dr. Vandermolen, you know what the  
22 Physicians' Desk Reference is, don't you?

23 A. Yes.

24 Q. It is a document that identifies  
25 prescription drugs, it describes their usages, talks  
26 about side effects and adverse effects, correct?

27 A. Yes.

28 Q. Is there anything in the Physicians' Desk

2085

1 Reference for Taxotere or Hycamtin that says that a loss  
2 of cognitive function or inability to think is one of  
3 the side effects or adverse effects of those drugs?

4 A. I don't know that it's in the PDR, the  
5 Physicians' Desk Reference. It's throughout the  
6 oncology literature. There's paper after paper after  
7 paper defining the problems that survivors have of  
8 cancer, and one of those problems is difficulty with  
9 mentation and cognitive function.

10 It's reported throughout the medical  
11 literature. Because it's not listed in the PDR doesn't  
12 mean it doesn't exist.

13 My wife had chemotherapy for breast cancer  
14 two years ago --

15 THE COURT: No, no.

16 THE WITNESS: Sorry.

17 THE COURT: Doctor, this is not an opportunity  
18 for personal reminiscences.

19 THE WITNESS: I apologize.

20 THE COURT: Answer the questions that are asked  
21 and nothing more; and then at an appropriate time  
22 Mr. Piuze, will have an opportunity to take you on  
23 redirect.

24 THE WITNESS: I understand. I'm sorry.

25 THE COURT: Go ahead, Counsel.

26 BY MR. BLEAKLEY:

27 Q. Is it your testimony that the medical  
28 literature is filled with scientific studies that these

2086

1 two drugs, Taxotere and Hycamtin, cause a loss of  
2 cognitive function in patients?

3 A. I don't know that there's literature that  
4 defines these specific drugs. I think it's more that  
5 chemotherapy in general causes problems with cognitive  
6 function, and the problems that she was having at that  
7 time --

8 THE COURT: No, no, no. The question is a  
9 specific one, and it's talking about medical literature  
10 and you have answered that.

11 Move on.

12 BY MR. BLEAKLEY:

13 Q. The chemotherapy drug that Mrs. Bullock is  
14 using now is a different one, as I understand it; is  
15 that right?

16 A. Yes.

17 Q. It's called Gemzar.

18 A. Gemzar.

19 Q. Gemzar. I mispronounced it again.

20 That's the one that she is taking now?

21 A. Correct.

22 Q. And last weekend, that's the chemotherapy  
23 drug that she would have been using?

24 A. Right.

25 Q. Is there anything in the medical  
26 literature for Gemzar that concludes on the basis of  
27 scientific research or studies that Gemzar causes a loss  
28 of cognitive function in patients who use it?

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1 A. I would answer that no, to my knowledge  
2 there is no specific data on Gemzar.

3 Q. Is there anything in the Physicians' Desk  
4 Reference, the PDR, for Gemzar that identifies loss of  
5 cognitive function or inability to think as one of the

6 side effects or adverse effects of Gemzar?  
7 A. I'm not aware that there is.  
8 Q. Now, this loss of -- difficulty thinking,  
9 I'm not sure I know what you mean by this, so let's  
10 explore this for a second.

11 Do you mean that, in your opinion, people  
12 who take chemotherapy forget things that happened a long  
13 time ago?

14 A. It's variable. It can be forgetfulness  
15 for recent events. It could be forgetfulness for events  
16 from a long time ago. Most of the time it's described  
17 as just a sense of not being as sharp, not being as  
18 clearheaded as -- not having the mental acuity, the  
19 mental power, so to speak.

20 Just a dulling of one's ability to think,  
21 to comprehend, to remember. Patients complain of  
22 forgetfulness, having to write things down.

23 Q. Does it mean that people who are having  
24 this effect remember things incorrectly?

25 A. I have had patients remember things  
26 incorrectly.

27 Q. As the result of taking chemotherapy?

28 A. I'm not sure that it's directly a

2088

1 consequence of the chemotherapy.

2 Q. You have answered the question. You have  
3 answered the question.

4 Let me ask you this: Does this  
5 chemotherapy or chemo-brain cause someone, to give an  
6 example, to say, "When I was young, my dad had a  
7 Cadillac" when, in fact, what he had was a Jeep?

8 A. I don't know. I have never encountered  
9 that.

10 Q. Does it mean that you simply can't rely on  
11 what people tell you as being what happened or what  
12 didn't happen?

13 A. It's more subtle. There may be some  
14 inaccuracies. They may not remember events as they  
15 actually occurred, but it's subtle. It's not a Cadillac  
16 or a Jeep. It's not that obvious often. It's, as I  
17 say, just a lack of getting things right, getting things  
18 straight, having things in order.

19 Q. Let me get very specific.

20 Mrs. Bullock's sworn deposition was taken  
21 in this case. She was asked questions by counsel for  
22 Philip Morris. Her sworn testimony was taken last  
23 weekend by her counsel. She was asked questions. A lot  
24 of them dealt with the past and things that happened in  
25 the past.

26 Are you telling us that we can't rely on  
27 what she said?

28 A. Can't rely on what she said at what time?

2089

1 Q. What she said about things and events that  
2 occurred many years ago?

3 A. What she said last week?

4 Q. What she said in October 2001 and what she  
5 said last week. Let's take them separately.

6 Does that mean that we cannot rely on what  
7 Mrs. Bullock said in a sworn deposition in October 2001  
8 about events that occurred a long time ago?

9 MR. PIUZE: Your Honor, that -- excuse me --  
10 that question is extremely overbroad.

11           THE COURT: Sustained.  
12 BY MR. BLEAKLEY:  
13       Q. Does it mean that this jury cannot rely  
14 on statements that Mrs. Bullock made under oath in her  
15 deposition as being factual?  
16       MR. PIUZE: It's still overbroad. I object.  
17       THE COURT: Sustained.  
18       THE WITNESS: We didn't --  
19       THE COURT: Excuse me, Doctor, there is no  
20 question right now. When I say "sustained," then you  
21 are off the hook.  
22       THE WITNESS: Thank you.  
23       THE COURT: Are you asking him -- just so I  
24 understand the question -- that the jury would not be  
25 able to rely on anything that she said? Is that the  
26 essence of the question?  
27       MR. BLEAKLEY: I was, and your Honor sustained  
28 an objection; too broad.

2090

1       THE COURT: Yes, it sure is.  
2       MR. BLEAKLEY: So I am going to get specific.  
3       THE COURT: Okay.  
4       MR. BLEAKLEY: That's fair. It is too broad.  
5       Q. Let's take, as an example, if Mrs. Bullock  
6 testified in her deposition in October 2001 that she  
7 tried to quit smoking in the 1970s. Is your testimony  
8 that chemo-brain means that we can't accept that as  
9 being factual because she might have it wrong as a  
10 result of taking chemotherapy?  
11      A. We did an MRI scan of her brain in August  
12 of 2001; and the reason we did that MRI scan is because  
13 she was having difficulty with mentation, with cognitive  
14 function.  
15      Q. And you found nothing in the MRI?  
16      A. I was concerned that she could have cancer  
17 in the brain. Small cell lung cancer frequently  
18 metastasizes to the brain; very, very common, the  
19 overwhelming majority of cases.  
20      We didn't find cancer in the brain, but  
21 the reason for doing the scan was difficulty with  
22 cognitive function.  
23      Q. But you didn't find anything in that MRI  
24 scan that either affirmed or disproved that she was  
25 suffering from lack of cognitive function, did you?  
26      A. No, that's not true. The MRI scan was  
27 abnormal. It's August 11, 2001, if I can read --  
28      Q. You can read that portion which relates to

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1 the issue of whether or not the MRI reveals anything  
2 about a loss of cognitive function.  
3      A. There's no --  
4      Q. First answer the question. Does it or  
5 does it not?  
6      A. Yes.  
7      Q. Read it. Please read it for us.  
8      A. The absence of an abnormality often makes  
9 a diagnosis.  
10     Q. Would you answer the question I asked you  
11 now, which is to read from the MRI scan results that  
12 which pertains to the issue of a loss of cognitive  
13 function, if there is any such thing in there.  
14     A. No, there is nothing that says there is a  
15 loss of cognitive function. That wouldn't be seen on

16 an -- that wouldn't be -- that's not something that's --  
17 you're asking for something that would never be there.

18 Q. Now let's go back to the question that I  
19 asked you, which I don't believe you answered, which is:  
20 Does the fact that Mrs. Bullock may have been suffering  
21 from some sort of loss of cognitive function as a result  
22 of chemotherapy mean that we cannot rely on her  
23 testimony that she tried to quit smoking in the 1970s?  
24 And if the answer is "I don't know," the answer is "I  
25 don't know."

26 A. And I think that's that I don't know what  
27 you could rely on.

28 Q. And if she testified during her testimony

2092

1 this past weekend -- I'm sorry -- if she testified in  
2 October of 2001, "he" -- referring to her first  
3 husband, Phillip Wulff -- "He did not know I was  
4 smoking, he -- I was back in South Dakota. I was  
5 married to him three years; and his mother smoked and  
6 father was dying of a malignant brain tumor; and we  
7 lived at their motel/mobile home park. So when I would  
8 help my mother-in-law at the motel, if she was doing any  
9 of the housework, she would sit down and have a  
10 cigarette; so we kept it our secret because her son did  
11 not like smoking," can we rely on that or not?

12 A. I don't know.

13 MR. BLEAKLEY: I have nothing further. Thank  
14 you.

15 THE COURT: Redirect.

16 MR. PIUZE: A little.

17  
18 \* REDIRECT EXAMINATION

19  
20 BY MR. PIUZE:

21 Q. When you told the jury that Betty Bullock  
22 had mentation problems or cognitive problems, I guess we  
23 should be clear.

24 Did she come in to you and say, "I am  
25 reporting mentation problems"? Or is that something you  
26 picked up from looking at her, talking to her, and being  
27 with her?

28 (A pause in the proceedings.)

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1 A. Okay. There's a note here on the chart of  
2 August 8, 2001. "She is relatively asymptomatic;  
3 however, she has had increasing difficulty with  
4 decreased cognitive function."

5 Q. Did you think that decreased cognitive  
6 function might be a symptom of a brain tumor having  
7 metastasized from the lung?

8 A. Yes.

9 Q. Is that why the MRI was done?

10 A. Yes.

11 Q. Did the MRI show no brain tumor?

12 A. It showed no brain tumors, correct.

13 Q. Taking away the brain tumor as a cause for  
14 decreased mentation or impaired mentation, what did that  
15 leave, in your opinion?

16 A. That the cause of her decreased mental  
17 function was not from tumor on the brain but from  
18 another cause.

19 Q. That cause, in your opinion, was what?

20 A. Related to her treatment, related to her

21 cancer.

22 Q. When you say -- and I think you did -- it  
23 is unknown if the mentation problems were caused -- and  
24 you either said only by the chemo or solely by the  
25 chemo, I don't know which, but it was one of those  
26 terms -- what did you mean by that?

27 A. That it's not -- that this problem with  
28 decreased mental function in patients who are treated

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1 with chemotherapy for cancer is well-defined; but  
2 whether or not it's cause and effect due to the drugs  
3 directly causing the problem or it's an altered immune  
4 system that causes the problem.

5 There are other things that happen with  
6 cancer that are called paraneoplastic syndromes, where  
7 the cancel cells produce substances, hormones, that can  
8 affect other parts of the body. It can affect the  
9 brain. It can affect the liver. It can affect kidney.  
10 It can affect metabolism. It can cause calcium levels  
11 to go up. It can cause other electrolyte abnormalities.

12 It's a para, meaning next to; neoplastic  
13 meaning next to the cancer. So it's a problem  
14 associated with the cancer itself.

15 There's problems like Alzheimers,  
16 dementias that are associated with the cancer. It is  
17 not cause and effect. The drug hasn't been proven, but  
18 it's the global problem. It's the chemotherapy. It's  
19 the cancer. It occurs, well-documented, in patients who  
20 are undergoing treatment for cancer; but I can't say  
21 that drug X results in this mental problem directly.

22 Q. I didn't ask you to say that, but what I  
23 will ask you to say is this: You have taken care of  
24 5,000 cancer patients. Is this type of problem  
25 secondary to the cancer combined with the treatment  
common?

27 A. Yes.

28 MR. PIUZE: I won't ask you to say anything

2095

1 else. I'm done. Thank you.

2 THE COURT: Recross.

3

4 \* RECROSS-EXAMINATION

5

6 BY MR. BLEAKLEY:

7 Q. In August of 2001, when Mrs. Bullock  
8 complained about a loss of cognitive function, or  
9 however she put it, and you thought there was something,  
10 you changed the chemotherapy that she used after that,  
11 didn't you?

12 A. It was shortly after that, correct.

13 Q. And there is, in fact, nothing in your  
14 records of any kind from then until the following  
15 February 2001 in which there is any reference of any  
16 kind to a loss of cognitive function, a difficulty  
17 thinking, lack of mentation, however you put it, there  
18 is not a single reference in any of the medical records  
19 to any such problem in September, October when her  
20 deposition was being taken, November, December or  
21 January of 2002; isn't that right?

22 A. That could be true.

23 MR. BLEAKLEY: I have nothing further.

24 THE COURT: All right. Doctor, we thank you  
25 very much for being here. I ask you to turn off the

26 microphone and unhook it. We would be grateful.  
27 MR. PIUZE: Your Honor, may this witness be  
28 excused?

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1 THE COURT: Surely.

2 Tomorrow we will operate for a half a day,  
3 and we will have, we believe, a live witness.

4 MR. PIUZE: Dr. Farone.

5 THE COURT: And then we will be off tomorrow  
6 afternoon. I have previously indicated to you that on  
7 Friday this case will be in recess and I will be working  
8 on an unrelated case.

9 However, on the day we return, Tuesday the  
10 3rd of September, all counsel in this case are going to  
11 be meeting with another judge in another courtroom on  
12 another matter, and that was originally scheduled for  
13 9:00 o'clock, which would move our starting time down  
14 the road considerably.

15 But that judge has graciously agreed, as  
16 have counsel, to meet with them at 8:30 on the 3rd. So  
17 we will begin here at 9:30 on Tuesday the 3rd of  
18 September. You are obviously welcome to come earlier if  
19 you want to, but the chances are that we won't be  
20 starting before 9:30.

21 Again, thank you very much. You are  
22 excused for the evening. We will see you tomorrow  
23 morning at 9:00.

24 Again, the admonition. Don't discuss this  
25 case amongst yourselves or with anyone else, and do not  
26 form or express any opinion on the matter until it's  
27 finally submitted to you. Thank you.

28

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1 (The following proceedings were held  
2 in open court outside the presence  
3 of the jury:)

4  
5 THE COURT: Anything you folks want on the  
6 record?

7 MR. PIUZE: Not from my side.

8 MR. BLEAKLEY: No, your Honor.

9 THE COURT: We are off the record.

10

11 (The matter was continued to Thursday,  
12 August 29, 2002 at 9:00 a.m. for further  
13 proceedings.)

14 \* \* \*